

EXHIBIT “A”

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 Case No. 1:21-cv-3703

5 -----x
6 ISOJON KHUSENOV,
7 Plaintiff,
8 - against -
9 PROKRAFT INC. and PRO-CUT,
10 Defendants.

11 -----x
12 PROKRAFT INC.,
13 Third-Party Plaintiff,
14 - against -
15 KARZINKA US, INC.,
16 Third-Party Defendant.

17 -----x
18 August 29, 2022
1:04 p.m.

19
20 Deposition of Expert Witness ANDREW
21 FOLEY, taken by the Defendants, held via
22 Zoom, before Tammy O'Berg, a Shorthand
23 Reporter and Notary Public of the State of
24 New York.
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A P P E A R A N C E S :

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A P P E A R A N C E S: (Cont'd)

ALSO PRESENT:

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* * *

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND
AGREED, by and between the Attorneys for
the respective parties hereto, that filing
and sealing be and the same are hereby
waived;

IT IS FURTHER STIPULATED AND
AGREED that all objections, except as to
the form of the question, shall be
reserved to the time of the trial;

IT IS FURTHER STIPULATED AND
AGREED that the within deposition may be
signed and sworn to before any notary
public with the same force and effect as
though signed and sworn to before the
Court.

1 ANDREW FOLEY

2 ANDREW FOLEY, having first been duly sworn
3 by a Notary Public of the State of New
4 York, was examined and testified as
5 follows:

6 EXAMINATION BY

7 MR. REDD:

8 Q. State your name for the record.

9 A. Andrew Foley.

10 Q. What is your business address?

11 A. 44 Buddington Road, Groton,
12 Connecticut 06340.

13 Q. Good afternoon, sir.

14 A. Good afternoon.

15 Q. My name is Joseph Redd. I'm
16 with the law firm of O'Connor Redd
17 Orlando. I represent defendants in this
18 case Prokraft Inc. and Pro-Cut.

19 I'll be asking a series of
20 questions today regarding an accident
21 involving a plaintiff named Isojon
22 Khusenov.

23 I'm going to ask that you keep
24 all your responses verbal so we can take
25 down your responses.

1 ANDREW FOLEY

2 Okay?

3 A. Yes.

4 Q. I'm also going to ask that you
5 let me finish my question before you give
6 your answer so that we have a clear
7 record.

8 Fair enough?

9 A. Understood.

10 Q. If at any point in time you
11 don't understand any question that I'm
12 asking you, please let me know. I'll try
13 to rephrase it for you.

14 Okay?

15 A. Yes.

16 Q. I don't want you to guessing.
17 We don't want you speculating.

18 Fair enough?

19 A. Yes.

20 Q. Doctor, could you please tell
21 us, first off, when you were first
22 retained in this case?

23 A. So that would have been in
24 December 2021, end of November, December
25 2021.

1 ANDREW FOLEY

2 Q. And at the time you were
3 retained, were you given some kind of
4 retainer, a sum of money, for your
5 services?

6 A. Yes.

7 Q. Can you tell us, sir, how much
8 you were given in that initial retainer?

9 A. \$3400.

10 Q. Since receipt of that initial
11 \$3400, have you received any other sums of
12 money in your association with this case?

13 A. Yes.

14 Q. How much have you received,
15 additionally received?

16 A. In addition, that would have
17 been 4590. 4,590.

18 Q. Sir, are you being compensated
19 for your testimony here today?

20 A. By the defense lawyers, I
21 understand.

22 Q. I'm going to assume that you're
23 charging us the same rate as you charge
24 plaintiff's counsel for your services?

25 A. No. Deposition rate is \$50 an

1 ANDREW FOLEY

2 hour more.

3 Q. Sir, we were provided a copy of
4 your curriculum vitae in this case, and I
5 want to spend a couple moments to go
6 through that.

7 Okay?

8 A. Okay.

9 Q. Briefly, can you start by
10 telling your educational background?

11 A. I have a bachelor of science in
12 electrical mechanical engineering from the
13 University of Sussex in the United Kingdom
14 back in 1988, and then I also have a Ph.D.
15 in engineering mechanics from Cranfield
16 University, 1995.

17 Q. After completing your education,
18 sir, what did you do next?

19 A. I worked for -- well, in between
20 my bachelor's degree and my Ph.D., I
21 worked for Lucas Aerospace Engineering
22 Company and also did some consulting work
23 with an accounting firm in London.

24 And after my Ph.D., I worked for
25 several gas turbine manufacturers; Rolls

1 ANDREW FOLEY

2 Royce, Alstom, Siemens.

3 And then I switched to academia
4 in 1999, started working for Coventry
5 University, Washington State, worked for a
6 university there, Ohio State University;
7 and for the last 17 years now the U.S.
8 Coast Guard Academy, New London.

9 Q. For the better part of the past
10 25 years, you've been in academia.

11 Would that be a fair statement?

12 A. Pardon?

13 Q. In the past, we'll say, 20
14 years, would it be fair to say that your
15 job has been in academia?

16 A. It would be fair, but I have
17 consulted for the last several years.

18 Q. Starting with Lucas Aerospace,
19 can you be a little more specific as to
20 the kind of things you worked on at Lucas
21 back in 1988 and '89?

22 A. As a graduate engineer, I worked
23 in the design office; so working on
24 basically drafting and doing calculations
25 for starter motors for aircraft engines

1 ANDREW FOLEY

2 was the main crux of that job.

3 Q. That was a part-time job?

4 A. Full-time.

5 Q. Full-time. All right.

6 Let's go to the next job over at
7 Kingsford in London.

8 Can you be a little more
9 specific as to what you did there?

10 A. So there I am working for a firm
11 of chartered accountants in London. So I
12 would do audits, particularly
13 manufacturing companies. So I would be
14 going out, going through the stocks and
15 basically going through the books.

16 So that was -- I was an
17 accountant, effectively, in training.

18 Q. Jumping to your next job over at
19 Cranfield University, can you be specific
20 as what you did there as a mechanical
21 engineer?

22 A. So I was employed whilst I was
23 undertaking my Ph.D. I was on full-time
24 employment doing research for rotational
25 aircraft equipment, so basically

1 ANDREW FOLEY

2 compressors and turbines.

3 So I would be doing coding for
4 the design of those and experimental work,
5 taking measurements inside compressors
6 with lasers and pneumatic equipment; so
7 pressure probes, vibration sensors, that
8 kind of thing. So --

9 Q. I'm sorry, go ahead. I cut you
10 off, Doctor. Go ahead.

11 A. No problem. So I was employed
12 to do that research work whilst I actually
13 was undertaking my Ph.D. for those four
14 years.

15 Q. Was the work that you did at
16 Cranfield primarily involved with the
17 aircraft industry?

18 A. Yes. Compressors, in
19 particular, rotating machinery.

20 Q. You also indicated that you
21 worked in some capacity for Rolls Royce?

22 A. So that was post-Ph.D. So I
23 would have worked for Alstom first, then I
24 went to work for Rolls Royce in Darby for
25 six months -- six to nine months I worked

1 ANDREW FOLEY

2 there, and then I worked for BMW, which
3 was BMW, Rolls Royce in Berlin after that.

4 Q. Was most of the work that you
5 did for Rolls Royce, was it involved in
6 air systems? Would that be a fair
7 statement?

8 A. It was basically all -- lots of
9 things to do with compressors;
10 compressors, turbines, air oil systems,
11 combustion systems. Basically, over those
12 years I worked on most things in the
13 aircraft engine.

14 Q. Same with BMW, same kind of
15 role?

16 A. Yeah. BMW was predominantly air
17 systems, though, air and oil systems.

18 Q. What was the next job you had
19 after that?

20 A. So then I worked for -- I
21 returned to Alstom in Lincoln, and I
22 worked for them for another two years and
23 working on a new gas turbine design. So I
24 was a project manager engineering
25 department head there on the new -- I

1 ANDREW FOLEY

2 can't remember engine's name -- the,
3 Tempest, new Tempest gas turbine.

4 Q. Were you working on new blade
5 and disc cooling systems?

6 A. Yep, disc cooling systems, and,
7 also, I was running the new test facility
8 for that engine.

9 Q. In your CV it indicates you
10 worked there from June of '95 to June of
11 '99; is that correct? That's four years?

12 A. It was broken up by the work I
13 did for Rolls Royce and BMW, so that was
14 in between there.

15 So I worked for Alstom, and then
16 I left Alstom for two years, basically
17 doing private consulting for Rolls Royce,
18 BMW, and then I went back to Alstom.

19 Q. Got you. Next job was over at
20 Coventry University?

21 A. Yes. So I was employed --

22 Q. That was from --

23 A. Sorry.

24 Q. You were employed as?

25 A. An associate professor.

1 ANDREW FOLEY

2 I started a new program, an
3 aerospace technology degree, and so they
4 brought me in to staff that and set up
5 that program.

6 Q. Would it be fair to say that
7 thereafter you -- that's when you entered
8 academia, and you've been doing that ever
9 since, for the most part?

10 A. Correct.

11 Q. Now, your attorney in this case
12 was kind enough to send over to us an
13 interrogatory response.

14 Have you seen that, sir?

15 A. If it's the one I sent in -- I
16 filled in one and sent it, so I assume
17 it's the same one.

18 Q. On page three of that response
19 it indicates for us the types of cases
20 you've been retained in in the past, and I
21 wanted to go through that list with you.

22 Okay?

23 A. Okay.

24 Q. The first case that's indicated
25 here involves a commercial ship injury to

1 ANDREW FOLEY

2 pilot.

3 Could you be a little more
4 specific about the services you rendered
5 in that particular case?

6 A. Yes. So the instant involved a
7 pilot who boarded a cargo ship going into
8 New York and New Jersey. He slipped on
9 ice.

10 And so basically I got the
11 log -- the track of the ship and matched
12 that to the weather distribution for that
13 time as the ship went through it; and then
14 I did a thermal model of the ship's deck
15 and basically showed that it was not for
16 possible for ice to have formed on that
17 deck during the time that the incident was
18 claimed to have happened --

19 Q. Was there -- -- go ahead.

20 A. That was basically it.

21 Q. So there's nothing more to that
22 opinion than what you just gave to us,
23 correct?

24 A. Yeah. I wrote a report -- I
25 mean, I had to do a pretty comprehensive

1 ANDREW FOLEY

2 thermal model of the ship's deck, logs
3 from the engine room for the interior
4 temperature of the ship, the exterior
5 temperature from weather stations, and
6 then show that at no point was the
7 temperature cold enough for ice to have
8 formed on that deck.

9 Q. The case had nothing to do with
10 warning signs or symbols, correct?

11 A. Correct.

12 Q. Or machine guarding, correct?

13 A. Yes.

14 Q. Or interlock devices, correct?

15 A. Correct.

16 Q. Did that case, did it go to
17 deposition?

18 A. No.

19 Q. So do you know if it went to
20 trial?

21 A. I do not. I assume they
22 settled. I didn't hear anything else.

23 Q. So would it be fair to say that
24 your service in that case was limited to
25 you looking at information, looking at

1 ANDREW FOLEY

2 evidence, and generating a report?

3 A. Correct.

4 Q. What year was that when you
5 rendered that opinion, that report?

6 A. Offhand, that was the -- one of
7 the longest ago, so offhand I can't
8 remember.

9 Q. Don't guess, but if you can
10 approximate within five years, that would
11 be great.

12 A. That's quite a long time ago,
13 that one. Around six years ago, I should
14 think. Maybe --

15 Q. The next case that's listed
16 here -- it says, PWC jet ski, serious
17 injury.

18 Now, in that case were you
19 retained by the plaintiff or the
20 defendant?

21 A. The plaintiff.

22 Q. Can you tell us, sir, please,
23 what the issues were in that particular
24 case?

25 A. Yeah. So the jet ski -- the

1 ANDREW FOLEY

2 young lady was the passenger on the rear
3 seat, and the boyfriend accelerated. She
4 was ejected, rotated off the back into the
5 water, and then -- because she was in
6 close proximity to the jet, which is a
7 pretty substantial fire hose, basically,
8 she suffered some serious internal
9 injuries to the rectum.

10 And so for that one I actually
11 was provided with the jet ski, and then I
12 did a series of tests actually on that jet
13 ski. So I took it out onto the water. I
14 measured pressures at the exit of that
15 nozzle. I had a mannequin, a dummy, test
16 dummy, put on the back, which we filmed in
17 slow motion rotating off the back; and
18 then I wrote pretty comprehensive report
19 on that one, as well.

20 Q. Would it be fair to say you did
21 an accident reconstruction in that
22 particular case?

23 A. Yes, of sorts.

24 Q. Do you consider yourself to be
25 an accident reconstruction expert?

1 ANDREW FOLEY

2 A. No.

3 Q. I'm sorry, what was that?

4 A. I'm not sure what -- I don't --
5 I'm not sure -- as far as the jet ski
6 goes, I suppose -- I was expert enough to
7 do the work that I did on that case, I
8 believe.

9 Q. Now, in that particular case,
10 you actually went into the field, you
11 looked at the jet ski -- did you look at
12 the jet ski or --

13 A. The jet ski. Sorry, the jet
14 ski, the actual jet ski.

15 Q. And then you also said you got a
16 dummy? There was a dummy that was
17 utilized as part of your reconstruction?

18 A. Correct.

19 Q. Was it fair to say you did that
20 in order to, to the best of your ability,
21 reconstruct the circumstances that
22 presented at the time that that accident
23 occurred?

24 A. Correct.

25 Q. Now, in that particular case,

1 ANDREW FOLEY

2 were you deposed in that case?

3 A. No.

4 Q. You did not give a deposition in
5 that case?

6 A. No.

7 Q. Did that case ever go to trial?

8 A. No.

9 Q. Do you know if that case was
10 subject to a motion by defense counsel to
11 preclude your testimony?

12 A. Not that I'm aware of, no.

13 Q. Did you testify in any kind of a
14 court proceeding, a hearing, in that
15 particular case?

16 A. No.

17 Q. Now, in that particular case,
18 when you were retained, at any point in
19 time from the time you were retained to
20 the time you generated your report in that
21 case and you did the reconstruction,
22 looking at the actual machine, putting the
23 dummy on and recreating what had happened
24 there, did you also at any point in time
25 in that case review any deposition

1 ANDREW FOLEY

2 transcripts of the parties in that case?

3 A. Yes.

4 Q. More specifically, did you look
5 at the deposition transcript of the
6 plaintiff?

7 A. Yes.

8 Q. Can you tell us, sir, why you,
9 as an expert, would look at the transcript
10 of the plaintiff? What was the purpose of
11 that?

12 A. The purpose of that was to -- to
13 see -- to confirm where the accident
14 happened, to find out how she was
15 attaching herself, how she was holding on
16 during that period.

17 All these things would have an
18 effect, perhaps, on how she came off, to
19 find out what they had done before the
20 accident occurred, had she got wet, was
21 she dry.

22 So to basically set the
23 parameters to understand how the accident
24 occurred.

25 Q. Because obviously, as an expert,

1 ANDREW FOLEY

2 you weren't there when the actual accident
3 occurred, correct?

4 A. Correct.

5 Q. So as an expert, it's important
6 that you, as an expert, get sworn
7 testimony of person's involved, okay, who
8 testified under oath what it was that
9 happened, correct?

10 A. Correct.

11 Q. And in that case did you also
12 get the deposition transcripts of the
13 defendants, as well?

14 A. I cannot recall in that case --
15 it was Yamaha, so I'm sure there was a
16 representative from Yamaha, but I can't --
17 ideally, it wasn't as useful for the
18 testing I was doing.

19 I don't believe I remember
20 seeing anything from Yamaha.

21 Q. So you don't know if you did or
22 did not look at the transcripts of the
23 defendants in that case?

24 A. I can't confirm.

25 THE COURT REPORTER: Off the

1 ANDREW FOLEY

2 record.

3 (Discussion off the record.)

4 Q. Sir, do you know what happened
5 with that case, the jet ski case?

6 A. It was settled.

7 Q. The next case in the
8 interrogatory response, C, is marine
9 boatyard equipment failure and personal
10 injury.

11 Do you see that?

12 A. Yes.

13 Q. Actually, before I go there, let
14 me jump back to the jet ski case.

15 When was that, when you gave
16 your report?

17 A. Sorry, it's been a couple years
18 since that one. I'd have to look on my --
19 on my resume. I don't remember. It's
20 been a couple years. Four years maybe
21 ago.

22 Q. That's an approximation?

23 A. Yes. It should be there on the
24 CV.

25 Q. So let's jump to the marine

1 ANDREW FOLEY

2 boatyard equipment failure and personal
3 injury case.

4 What was that case about?

5 A. So this was an accident in a
6 boatyard in Martha's Vineyard. So the
7 yard workers were moving a sailboat on a
8 Tow Star (phonetic) trailer -- so it's a
9 trailer for moving the boats in the
10 boatyard -- when the boat -- one of them
11 was under the boat when it slipped off the
12 trailer and crushed him.

13 So my -- my case was to
14 basically look at the accident and find
15 out what happened, and it turns out that
16 the -- the trailer was -- it was not
17 designed very well. It didn't hold the
18 boat and relying on friction, which is not
19 a very good way of restraining the boat,
20 and it slipped off the trailer. So it
21 wasn't a good design. It was a flawed
22 design.

23 Q. Was there anything else that
24 formed the basis of your opinion besides
25 the design defect? Anything else in that

1 ANDREW FOLEY

2 case?

3 A. So there's a multitude of things
4 that go into it; looking at it, looking
5 the weight of the boat, looking at how the
6 boat was loaded, looking at the multiple
7 depositions and how they described how it
8 was moved, what he was doing at the time.
9 So friction coefficients of the metal, the
10 range that would be possible. So all of
11 that stuff goes to making those
12 conclusions.

13 Q. So in that case, you did get the
14 deposition transcripts in that case?

15 A. Correct.

16 Q. And you did review them,
17 correct?

18 A. Yes.

19 Q. Because it was important for you
20 to know what the witnesses had to say
21 about what happened, right?

22 A. Correct.

23 Q. And you actually went to the --
24 you actually went to the actual trailer,
25 and you looked at it yourself?

1 ANDREW FOLEY

2 A. No, I didn't go to see the
3 trailer in that case.

4 Q. Did you speak to anybody --
5 besides the deposition transcripts, did
6 you ever speak to anybody who was at the
7 accident scene to ascertain what they knew
8 about the accident?

9 A. No.

10 Q. Now, in these first three
11 cases -- we've got a commercial ship
12 injury, we've a jet ski injury, we've got
13 a marine boatyard equipment case -- all
14 these cases seem to have a common
15 denominator in that they seem to have to
16 do with water and crafts on water.

17 Why is it that, to the best of
18 your knowledge, you were retained in these
19 three water-related cases?

20 A. Probably because I have a Ph.D.
21 in mechanical engineering. Maybe because
22 I worked with the Coast Guard -- I think
23 it's because of my mechanical engineering
24 background, teaching mechanical
25 engineering and working in the field.

1 ANDREW FOLEY

2 Q. As you sit here today, do you
3 have any licenses?

4 A. Yes. I have a professional
5 engineering license in the state of
6 Connecticut and also in the state of
7 Washington.

8 Q. How about New York?

9 A. Not in New York, no.

10 Q. Is there an exam you have to
11 take to get that license?

12 A. Yes. For the professional
13 engineering license, yes, there is.

14 Q. Did you ever apply for or try --
15 MR. REDD: Strike that.

16 Q. Did you ever take the exam in
17 New York to be a PE?

18 A. No.

19 Q. Any particular reason why not?

20 A. I live in Connecticut, I
21 practice in Connecticut, so there's no
22 reason for me to take one in New York.

23 Q. Well, our case here involves a
24 New York -- New York parties, correct?

25 A. Correct.

1 ANDREW FOLEY

2 Q. A piece of equipment that was
3 being used in New York, correct?

4 A. Correct.

5 Q. Are you a member of the
6 Institute of Mechanical Engineers?

7 A. The American -- did you mean the
8 American Society of Engineers --

9 Q. I'll rephrase it.

10 In your CV, under Professional
11 Societies, it states that -- it says
12 Institute of Mechanical Engineers UK.

13 A. Okay. No, I'm no longer a
14 member. I was a member when I was in the
15 UK. So that's expired.

16 Q. It has expired, correct?

17 A. I should think so, yes.

18 Q. Now, it also says that you were
19 a member of a Society of Automotive
20 Engineers.

21 Do you see that?

22 A. Correct.

23 Q. Are you still a member?

24 A. No, no, that's --

25 Q. Has that also lapsed?

1 ANDREW FOLEY

2 A. Yes.

3 Q. It also indicates here that --
4 it says USCG master -- master's 50-ton
5 license. What is that?

6 A. So it's actually upgraded now.
7 I have a hundred-ton master's license. It
8 means I can captain boats up to a hundred
9 tons. It's a U.S. Coast Guard license.

10 Q. Is that still an active license?

11 A. Yes.

12 Q. Is that one of the reasons, to
13 the best of your knowledge, that you were
14 retained in those first three cases that
15 we talked about?

16 A. I shouldn't -- no, I don't think
17 so.

18 Q. In the marine boatyard case, in
19 that particular case, did you offer sworn
20 testimony?

21 A. No.

22 Q. Did you ever appear in court for
23 any kind of a hearing?

24 A. No.

25 Q. Do you know what happened with

1 ANDREW FOLEY

2 that case?

3 A. It settled.

4 Q. Sir, have you ever testified in
5 a courtroom in the United States in a
6 civil matter?

7 A. Yes, once.

8 Q. When was that?

9 A. This was maybe about four, five
10 years ago. It was a personal matter.

11 Q. Aside from any personal matter,
12 divorces, things like that, I'm talking
13 about any professional -- in your
14 professional role, did you ever testify in
15 a court proceeding?

16 A. No.

17 Q. So would it be fair to say at
18 this point in time you've never been
19 qualified as an expert of any kind before
20 any court in the United States?

21 A. That's correct. If that's what
22 you describe as being qualified, then I
23 suppose that's correct.

24 Q. Well, did any judge in any
25 courtroom, any venue, ever recognize you

1 ANDREW FOLEY

2 as being an expert in any field, to the
3 best of your knowledge?

4 A. No.

5 Q. Same question for the United
6 Kingdom: Were you ever qualified as an
7 expert in the United Kingdom to testify
8 before any court or tribunal?

9 A. No.

10 Q. Next case, it says, Apartment
11 fire, malfunctioning range.

12 When were you retained in that
13 case?

14 A. Three years ago, I think it was.

15 Q. Can you briefly tell us what
16 that case was about?

17 A. So there was a gentleman down in
18 Mississippi who went into his apartment,
19 was cooking some food. He opened the
20 oven. There was an explosion and a fire,
21 and so I was retained to find out what had
22 happened in that case, why was there an
23 explosion from an electric oven.

24 Q. To ascertain what had happened,
25 can you tell us more specifically what you

1 ANDREW FOLEY

2 did, what you reviewed before reaching
3 your opinion?

4 A. So I went through all the
5 maintenance records for the apartment --
6 it was a very large apartment complex --
7 looking at the history of these ovens.

8 I got the user manuals. I went
9 through the depositions and then the
10 photographs, the fire marshal
11 investigations, all the information that
12 was provided to me by the attorneys, and
13 then tried to figure out how this
14 explosion could have occurred and caused
15 the damage that it did.

16 Q. Once again, you did look at the
17 transcripts in that case, correct?

18 A. Correct.

19 Q. Besides looking at the
20 transcripts, did you ever independently
21 interview the injured person in that case?

22 A. No.

23 Q. Besides looking at the
24 deposition transcript of the plaintiff,
25 did you look at any accident report or

1 ANDREW FOLEY

2 incident report?

3 A. Yes. So I looked at the
4 investigating fire marshal's report.

5 Q. Did you go to the scene in that
6 case?

7 A. No.

8 Q. Did you testify in that case?

9 A. No.

10 Q. To the best of your knowledge,
11 did that case settle?

12 A. Yes.

13 Q. And you never appeared in a
14 hearing, correct?

15 A. Correct.

16 Q. Next case, it says, Dual
17 crawler-crane collapse.

18 Do you recall the venue of that
19 case?

20 A. That was in Mississippi.

21 Q. Do you know when you were
22 retained in that case?

23 A. About two years ago.

24 Q. Before rendering an opinion in
25 that case, can you tell us what background

1 ANDREW FOLEY

2 information you gathered up?

3 A. So, again, I had photographs, I
4 had video of the incident, I had numerous
5 depositions, product manuals, user
6 manuals. Just a whole host of stuff
7 provided by the attorneys in that case.

8 Q. In that particular case, did you
9 actually testify in that case at a
10 deposition?

11 A. Yes.

12 Q. And you offered sworn testimony
13 in that case?

14 A. Correct.

15 Q. And was that done virtually or
16 was that done live?

17 A. That was live.

18 Q. By the way, as we're doing this
19 today, you understand you're under oath?
20 This is sworn testimony as if you were
21 appearing at a deposition live or if you
22 were testifying in front of a judge,
23 right?

24 A. Correct.

25 Q. In that particular case, give us

1 ANDREW FOLEY

2 some details on the crane collapse.

3 A. So these were two very large
4 cranes in a shipyard, by coincidence. So
5 they were doing a dual lift of a ship's
6 bow section, so it's about 200 tons; and
7 then as they were moving with the bow
8 suspended, basically one of them moved too
9 fast, pulled the other crane over.

10 So one crane came down, and then
11 the other one toppled down after it. So
12 it actually injured one of the cab
13 drivers.

14 The case I was retained for was
15 one of the cranes fell on an adjacent
16 building and very seriously injured a man
17 that was -- there was a gentleman in that
18 building. The crane fell on top of him.
19 And so I was retained to investigate that
20 failure.

21 Q. When, sir, were you retained in
22 that case, in the crane case?

23 A. I forget the exact date. I
24 think it's 2019. Somewhere around there.

25 Q. And the next case we have on the

1 ANDREW FOLEY

2 list is a commercial meat -- it says
3 "grinder case."

4 I assume that would be our case?

5 A. I'm not sure if that's this one
6 or another one that I've done that's
7 ongoing at the moment.

8 Q. You have another case that's
9 ongoing right now?

10 A. Yes.

11 Q. Where is that case venued?

12 A. That's New Jersey.

13 Q. Can you tell us, were you
14 retained by the plaintiff or the defendant
15 in that other grinder case?

16 A. By the plaintiff.

17 Q. What is plaintiff's counsel's
18 name in that case?

19 A. I'll have to find it. I can't
20 remember offhand. It's a New York firm, I
21 think.

22 Q. Was it the same firm that
23 retained you in this case?

24 A. No.

25 Q. Were you retained in that case

1 ANDREW FOLEY

2 before you were retained in our case or
3 after?

4 A. I was retained before.

5 Q. When you were retained in that
6 case, were you -- tell us what you did
7 before rendering an expert opinion in that
8 other grinder case, the one in New Jersey?

9 A. That one I've done a site visit,
10 photographed the machine, and then it went
11 quiet.

12 So it's actually just --
13 although I was retained before this one, I
14 didn't do much. There was no request for
15 a report. They just wanted -- retained
16 me, and now it's actually just starting to
17 pick up again. It's been quiet.

18 Q. Could you tell us the name of
19 the plaintiff in that case?

20 A. Maldonado, M-A-L-D-O-N-A-D-O.

21 Q. First name?

22 A. I don't know offhand. I have to
23 look at it.

24 Q. What's the venue in New Jersey?

25 A. Again, I would have to look at

1 ANDREW FOLEY

2 the files to find that out.

3 Q. What kind of machine are we
4 talking about?

5 A. So this is an industrial meat
6 grinder, much bigger than the one in this
7 case.

8 Q. Do you know the manufacturer of
9 that other -- that meat grinder?

10 A. MG -- I have to find -- again, I
11 don't want to say because I'm not sure.

12 Q. Can you tell us what happened in
13 that case? What's your understanding of
14 what happened in that case?

15 A. The lady involved was working
16 nightshift cleaning the machine with a
17 water hose pipe. In the process of
18 cleaning it, the pipe and her arm got
19 pulled into the machine, and she suffered
20 an amputation.

21 Q. At this point in time, you've
22 not been deposed in that case as of yet?

23 A. No.

24 Q. And you've not generated a
25 formal report in that case as of yet?

1 ANDREW FOLEY

2 A. No.

3 Q. Based on the materials you've
4 looked at --

5 MR. REDD: Strike that.

6 Q. In that particular case, have
7 there been depositions yet?

8 A. Again, I don't know. I'm not
9 aware.

10 Q. It is that a federal case or a
11 state case?

12 A. I do not know offhand.

13 Q. Did you go to the scene of that
14 accident?

15 A. Yes.

16 Q. When you went to the scene of
17 the accident in that case, what did you
18 do?

19 A. So I basically inspected the
20 machine, walked around it, photographed
21 it, took some measurements.

22 Q. Have you arrived at any
23 preliminary determinations in that case?

24 A. No.

25 Q. Have you spoken to the injured

1 ANDREW FOLEY

2 person in that case?

3 A. No.

4 Q. Have you seen any accident or
5 incident reports in that case?

6 A. Not that I'm aware of, no --
7 (Crosstalk.)

8 Q. At this early juncture in that
9 case, does that case involve any interlock
10 devices?

11 A. Yes.

12 Q. Does that case involve warnings
13 or lack thereof?

14 A. Again, it's early, so I
15 haven't -- I haven't made any conclusions
16 or observations to that point yet.

17 Q. Besides the attorney who
18 retained you, have you spoken to any
19 witnesses in that case?

20 A. No.

21 Q. What further information are you
22 waiting for before you render a report in
23 that case?

24 A. Again -- I'm waiting for
25 instruction from the attorney as how we

1 ANDREW FOLEY

2 wish to proceed.

3 Q. Now, in that case, you were
4 retained by the plaintiff, correct?

5 A. Correct.

6 Q. Would it be fair to say that all
7 the cases you told us about, with the
8 exception of the first one involving the
9 injury to the pilot, you've always been
10 retained by the plaintiff? Is that a fair
11 statement?

12 A. Correct.

13 Q. Okay. Let's jump to the next
14 matter, the residential heating system
15 transient analysis case.

16 Where is that venued?

17 A. So that, I believe, is in
18 Massachusetts.

19 Q. And you were retained by the
20 plaintiff, correct?

21 A. Correct.

22 Q. How far along is that case?

23 MR. REDD: Strike that.

24 Q. Have you been deposed in that
25 case?

1 ANDREW FOLEY

2 A. No.

3 Q. Has the plaintiff been deposed
4 in that case?

5 A. I don't know.

6 Q. Have you been to the scene of
7 that accident?

8 A. No.

9 Q. Can you be a little more
10 specific as to what that case is about?

11 A. So the case is about heating
12 oil. So the gentleman passed away --
13 didn't have eating oil when it was
14 supposed to be delivered. The claim was
15 that it was delivered.

16 So it basically boiled down to
17 finding out at what point the furnace went
18 out. So I did a thermal analysis on the
19 house. I had to work out the temperature
20 drop -- the range of temperature drops
21 that could occur to figure out when the
22 furnace would have went off.

23 So based on that, that's what I
24 was retained to do for the attorney,
25 thermal analysis of the property.

1 ANDREW FOLEY

2 Q. Does that case have anything to
3 do with interlock devices?

4 A. No.

5 Q. Warnings?

6 A. No.

7 Q. Emergency shutoffs?

8 A. No.

9 Q. Next case, lawnmower machinery
10 failures.

11 Do you see that?

12 A. Correct.

13 Q. Where is that venued?

14 A. That one is in Rhode Island.

15 Q. Can you give us a little more
16 information about the factual
17 underpinnings of that case?

18 A. The what? Sorry.

19 Q. Can you give us some more
20 information, the factual background, of
21 that particular case?

22 A. So the case involves a Honda
23 lawnmower. And so the lady involved was
24 moving the lawnmower -- it has a foldable
25 handle. The handle closed, collapsed, and

1 ANDREW FOLEY

2 in the process severed her finger. So
3 it's not the actual lawnmower blade. It's
4 the handle design with the pinch point is
5 the problem with the design there.

6 Q. Have you not been deposed in
7 that case yet?

8 A. No.

9 Q. Has plaintiff been deposed in
10 that case?

11 A. I do not know.

12 Q. Have you reviewed any deposition
13 transcripts in that case?

14 A. No.

15 Q. Did you look at the lawnmower in
16 question before --

17 MR. REDD: Strike that.

18 Q. Have you looked at the lawnmower
19 yet?

20 A. No, not that one.

21 There's two lawnmower cases. So
22 there's another one that's almost
23 identical. With the gentleman, same
24 thing, the lawnmower folded on his finger.

25 That one I have read some of the

1 ANDREW FOLEY

2 depositions, but they're -- both of those
3 are ongoing cases.

4 Q. In those cases where you
5 reviewed the transcripts, the deposition
6 transcripts, were they -- were those
7 cases, were they were provided to you by
8 counsel, whether you requested them, a
9 combination of these things or something
10 else?

11 A. It's a combination of each. So
12 usually I'm retained, I ask for the files,
13 and the attorney provides them.

14 Sometimes I ask, sometimes they
15 just provide them, but that's usually
16 discussed when they're interviewing me for
17 the position to be retained. We discuss
18 those things then, and then they send the
19 files to me.

20 Q. Sir, have you ever been employed
21 with any company who manufactures
22 equipment in the food preparation
23 industry?

24 A. No.

25 Q. Have you ever been retained as a

1 ANDREW FOLEY

2 consultant engineer to evaluate equipment
3 that is used in the food preparation
4 industry?

5 A. No.

6 Q. Sir, have you ever designed a
7 meat grinder?

8 A. No.

9 Q. Have you ever designed any piece
10 of equipment that is used in the food
11 preparation industry?

12 A. No.

13 Q. Have you ever worked in a
14 butcher shop?

15 A. No.

16 Q. Have you ever operated a meat
17 grinder of the type involved in this
18 lawsuit?

19 A. No.

20 Q. As part of your review of this
21 particular case, did you ever consult with
22 anybody who works in the food preparation
23 industry?

24 A. No.

25 Q. Sir, can you identify any of

1 ANDREW FOLEY

2 Prokraft's competitors in the industry?

3 My client is Prokraft. We're
4 the defendant here.

5 Can you identify any of my
6 client's competitors in the industry?

7 A. So there's -- I'm trying to
8 think. Hobart would be one, Hobart. So
9 that's one that jumps out. Kingfisher, I
10 think, was another one.

11 Again, these kind of -- Prokraft
12 isn't actually the manufacturer -- most of
13 these are made -- Prokraft imports them.
14 I'm not sure they actually manufacture
15 them.

16 Q. That's correct. I appreciate
17 that.

18 So when I say "consulting" --

19 MR. REDD: Strike that.

20 Q. Have you ever offered your
21 services to a company that distributes
22 food preparation equipment?

23 A. No.

24 Q. Now, does Hobart, do they
25 manufacture, sell or distribute a meat

1 ANDREW FOLEY

2 grinding machine?

3 A. I believe so.

4 Q. Do you know the models?

5 A. No, offhand.

6 Q. You said the other one that you
7 can think of was Kingfisher, I think you
8 said?

9 A. Yeah. I was looking at a few of
10 them earlier today.

11 I'm trying to think -- there's
12 Kingfisher, there's Pro-Cut -- sorry, not
13 Kingfisher, Thunderbird. That was it,
14 Thunderbird -- and, again, I don't know if
15 they're the manufacturer like of the
16 Prokraft or the just the importer. And
17 KWS was another one, I think.

18 Again, most of these are
19 imported. Whether those names are the
20 manufacturer or not, I don't know.

21 Q. The New Jersey case, you said it
22 was a larger machine?

23 A. Yes.

24 Q. Do you know the manufacturer of
25 that particular machine?

1 ANDREW FOLEY

2 A. Let's see. I know it's MG -- it
3 escapes me at the moment, but, again, I
4 think it's another case where it was
5 imported.

6 It was a much bigger machine. I
7 can find it, but I don't remember the name
8 at the moment.

9 Q. Can you give us a better
10 description of this larger machine on the
11 case you're working on in New Jersey?

12 A. So it's probably ten-foot tall,
13 12-foot -- 12-feet probably deep.

14 You load the -- the meat is
15 loaded into the top, into a big hopper,
16 and it has twin blades, twin augers, that
17 are basically -- it's a blender rather
18 than a grinder, is probably a better
19 description.

20 So it mixes the meat up in this
21 big hopper and pushes it out and through
22 the front, through two gates in the front,
23 into collecting buckets. So it's a
24 blender rather than a grinder.

25 Q. And the injured person in that

1 ANDREW FOLEY

2 case was attempting to clean the machine?

3 A. Yes.

4 Q. Do you have any knowledge of FDA
5 standards for food safety when it comes to
6 cleaning of machines that process meat
7 products?

8 A. Specifically, do I know all the
9 steps by heart --

10 Q. Do you know of any FDA standards
11 that apply to food processing machines,
12 and more specifically as to how they
13 should be cleaned or how often they should
14 be cleaned after they've been utilized?

15 A. No, no.

16 Q. Have you ever designed or
17 written a warning that's been used in any
18 type of product?

19 A. No.

20 Q. In this case, our case, did you
21 ever conduct a formal accident
22 reconstruction?

23 A. In this case, no.

24 Q. Are you familiar with the study
25 of human factors and ergonomics?

1 ANDREW FOLEY

2 A. By who?

3 Q. Are you familiar with that term,
4 "human factors and ergonomics," more
5 specifically in the context of machine
6 use?

7 A. Yes.

8 Q. Are there experts who are human
9 factors experts?

10 A. There are.

11 Q. Do you know what qualifications
12 those persons have?

13 A. Nope.

14 Q. Do you have a working definition
15 of what a human factors expert does?

16 A. Basically looking at the
17 interaction of people with machinery. Not
18 just machinery, furniture, accommodation
19 space, that kind of thing. So it's how --
20 how the human form interacts with
21 hardware.

22 Q. Are you familiar with an outfit
23 called the Human Factors and Ergonomics
24 Society?

25 A. I've heard of them, yes.

1 ANDREW FOLEY

2 Q. Is there specific training in
3 human factors that these people undergo to
4 become part of that society?

5 A. I assume there is.

6 Q. Have you ever taken such
7 courses?

8 A. No.

9 Q. Is psychology also part of human
10 factors in ergonomics?

11 A. Not -- it actually can be part
12 of anything if you want it to be, but my
13 understanding of ergonomics, it's the
14 physical interaction between the human
15 body and the hardware, not the psychology.

16 Q. The way the human body interacts
17 with a machine, there's also a
18 psychological component of how the person
19 is going to utilize his body when working
20 with that particular machine.

21 Would you agree with that, sir?

22 A. The question, I think, is
23 flawed. I teach engineering. Psychology
24 is involved with that, but I don't need to
25 teach psychology to teach engineering.

1 ANDREW FOLEY

2 Psychology is involved with
3 everything. I would agree with you.

4 Q. Is psychology involved in
5 everything, Doctor?

6 A. Yes.

7 Q. Including how human beings
8 interact with machines?

9 A. Yes, in that case.

10 Q. Including how humans would
11 operate machinery such as a grinder?

12 A. Correct.

13 Q. Sir, are you familiar with
14 biomechanics?

15 A. Yes.

16 Q. Is there an area of study called
17 biomechanical engineering?

18 A. There is.

19 Q. What is that? Can you give us a
20 working definition of biomechanical
21 engineering?

22 A. So it's -- my son just got a
23 degree in biomechanical engineering.

24 So as far as he's concerned,
25 it's very similar to what I do. There's

1 ANDREW FOLEY

2 the general engineering base to it, and
3 then there's some specialties in -- it's
4 basically -- from what I've seen of
5 biomechanical engineering, it's mechanical
6 engineering with specialties in human
7 materials; blood, bones, flesh, that kind
8 of thing.

9 Q. Do you have any specific
10 training in biomechanics, biomechanical
11 engineering?

12 A. Only in what I've taught and
13 what I've picked up in doing these cases
14 over the years.

15 Q. Is there a biomechanics
16 engineering society?

17 A. I don't know. I would think so,
18 but I'm not a member of one if there is,
19 no.

20 Q. Sir, do you possess any medical
21 training?

22 A. Just CPR, first aid, that kind
23 of thing.

24 MR. REDD: If everyone's okay
25 with it, why don't we take a

1 ANDREW FOLEY

2 five-minute break?

3 MR. EVANS: Okay.

4 (Brief recess taken.)

5 BY MR. REDD:

6 Q. Dr. Foley, earlier you indicated
7 that you were retained in a case in New
8 Jersey, but you couldn't recall -- you
9 could only recall the plaintiff's name;
10 you could not recall the defendant's name
11 or the venue or the index number.

12 Do you maintain -- are you in
13 your home office right now?

14 A. I am.

15 Q. Do you have information
16 regarding that other case in your home
17 office, more specifically a copy of the
18 caption or pleading in that case?

19 A. I'll take a quick look. Give me
20 one second. I'll get the file.

21 So -- are you there?

22 Q. Yep. Go ahead.

23 A. So it's -- you want the civil
24 docket number or -- I've got my --

25 Q. Let's start with the venue --

1 ANDREW FOLEY

2 start with the venue and the docket
3 number, if you would.

4 A. So it's the United States
5 District Court of New Jersey.

6 Q. And the docket number?

7 A. 2:20-cv-06297-ES-CLW.

8 Q. Can you give us the full name of
9 the plaintiff in case?

10 A. It's Marjorie, M-A-R-J-O-R-I-E,
11 Marjorie, Maldonado, M-A-L-D-O-N-A-D-O.

12 Q. And the name of the defendant or
13 defendants in that case, please?

14 A. It's Material Transportation
15 Company and Kohler Industries,
16 K-O-H-L-E-R, Kohler Industries Inc.

17 Q. Any other defendants?

18 A. That's it.

19 Q. Is there a third-party action
20 attached to it?

21 A. No, that seems to be it.

22 Q. All right. Thank you.

23 Moving right along now,
24 directing your attention to our case, and
25 more specifically I want to -- I want you

1 ANDREW FOLEY

2 to look at your report which is -- which
3 we've marked today as Exhibit G.

4 (Defendant's Exhibit G, expert
5 report, marked for identification, as
6 of this date.)

7 Q. Do you have your report in front
8 of you, Dr. Foley?

9 A. I do.

10 Q. Could I direct your attention to
11 page three of your report?

12 So I'm going to direct your
13 attention to the document, and more
14 specifically I'm going to direct you to
15 page three of the report, the page titled
16 Introduction.

17 A. Okay.

18 Q. Now, going back to page three,
19 it indicates that you were retained by the
20 law office of Yuiry Prakhin, correct?

21 A. Correct.

22 Q. And you were retained to
23 investigate, okay, a Pro-Cut KG-32 grinder
24 injury, correct?

25 A. Correct.

1 ANDREW FOLEY

2 Q. Sustained by the plaintiff, Mr.
3 Khusenov, on May 29, 2021, correct?

4 A. Correct.

5 Q. Now, below that it says, While
6 generating this report, the following
7 documents have been reviewed.

8 Could you please, for the
9 record, indicate for us what it was that
10 you reviewed before preparing this report?

11 A. So there's the product sales
12 brochure, owner's manual, video footage.
13 There's an initial disclosure by
14 Third-Party Defendant Karzinka,
15 plaintiff's initial disclosure, response
16 to interrogatories, photographs from the
17 inspection on the 1st -- 10th of January
18 2022, photographs from an inspection on
19 the 11th of February 2022, UL 763
20 motor-operated commercial food preparing
21 machines Underwriters Laboratory standard.
22 There's a CFR 1910.147, Control of
23 hazardous energy lock-out, and another CFR
24 1910.212, General requirements for
25 machines, a guidebook for designing

1 ANDREW FOLEY

2 emergency stop equipment, and then I've
3 got Amazon.com, various meat grinders
4 advertised for sale.

5 Q. Besides the items that you just
6 listed for us which are contained in this
7 report, did you review any other writings
8 or documents or things before generating
9 this report?

10 A. Before generating this, no.

11 Since this has been generated, I
12 have seen two other depositions -- not
13 depositions, reports.

14 Q. You saw -- I'm sorry.

15 A. That's what was involved --
16 since writing this, I have seen two more
17 expert reports.

18 Q. Expert reports, and you're
19 talking about -- which expert reports are
20 you talking about?

21 A. So the defendants' experts,
22 which were -- I've got their names written
23 here somewhere. So basically the two
24 defendant experts. I can't remember their
25 names. I can't give you their names now.

1 ANDREW FOLEY

2 Q. I'll help you out. Did you look
3 at a report from Affiliated Engineering
4 Laboratories Inc., a report dated June
5 14th, 2022, by a PE named George -- get
6 ready, Miss Reporter --
7 P-F-R-E-U-N-D-S-C-H-U-H?

8 A. Yes.

9 Q. So you looked at that report,
10 correct?

11 A. That one, correct.

12 Q. What was the other report that
13 you looked at?

14 A. The other one was by
15 Mr. Crawford.

16 Q. Mr. Crawford?

17 A. Crawford, Robert Crawford. I
18 reviewed the report.

19 Q. What kind of report was
20 Crawford's report?

21 A. A mechanical engineer report,
22 and retained by the law firm -- I think
23 it's Congdon Flaherty O'Callahan
24 Fishlinger & Pavlides.

25 Q. So just to go back, besides all

1 ANDREW FOLEY

2 the items that you testified to which are
3 contained on page three of your report,
4 the two expert reports that -- expert
5 reports that you just identified for us,
6 have you reviewed any other documents or
7 things besides that?

8 A. No, not specifically, no. Just
9 general textbooks and things that I would
10 look at but nothing specific.

11 Q. When did you receive the expert
12 report from Affiliated?

13 MR. REDD: Let me rephrase that.
14 Strike that.

15 Q. When did you receive the report
16 that was generated by Affiliated
17 Engineering?

18 A. I would have received that a
19 week ago.

20 Q. And that was forwarded to you by
21 plaintiff's counsel?

22 A. Correct.

23 Q. And the same with Mr. Crawford's
24 report; that was also forwarded to you by
25 plaintiff's counsel?

1 ANDREW FOLEY

2 A. By plaintiff's counsel, correct.

3 Q. Now, the list of items that are
4 contained on page three of your report
5 that you reviewed, did you get those
6 reports right out of the box when you were
7 first retained, did they dribble to you
8 over time, or something else?

9 A. Some of them were given to me,
10 some of them I found.

11 So the standards are mine. The
12 photographs I generated on my trips. So a
13 couple of those were provided by the
14 attorney, correct.

15 Q. And I would assume you've had
16 multiple conversations with plaintiff's
17 counsel about this case?

18 A. I had several conversations,
19 yes.

20 Q. How many conversations would you
21 say you had?

22 A. In total, probably six to eight.

23 Q. When was the last conversation
24 you had with counsel?

25 A. I had a brief conversation with

1 ANDREW FOLEY

2 Attorney Zohar about 15 minutes before
3 this meeting.

4 Q. Any other conversations with his
5 office in the last 30 days besides that
6 conversation with Mr. Zohar?

7 A. Only e-mails with the secretary.

8 Q. Any other phone conversations
9 with any attorneys at the Prakhin law
10 firm?

11 A. In the last -- how many days?

12 Q. Let's open it up.
13 You had one conversation today
14 for 15 minutes?

15 A. Correct.

16 Q. When was the last conversation
17 before that that you had with plaintiff's
18 office, a phone conversation where you
19 spoke to him?

20 A. I'm trying to -- it's been a
21 while. It's been a couple weeks probably.
22 I can't remember exactly.

23 Q. Well, you said in total there
24 were six to eight conversations you had
25 with plaintiff's counsel?

1 ANDREW FOLEY

2 A. Over the last eight months or
3 so, yeah.

4 Q. How many attorneys in that
5 office did you speak to? Was it just
6 Mr. Zohar, or was there anybody else you
7 spoke to?

8 A. Attorney Prakhin once or twice
9 and Attorney Zohar. I think I talked to
10 Attorney Zohar last week when you
11 cancelled, as well. He called me up from
12 California to say that the deposition was
13 cancelled.

14 Q. Earlier we asked you about a
15 bunch of other cases where you were
16 brought in as an expert to render an
17 opinion, and in those cases you told us
18 how important it was for you, as the
19 expert, to review the deposition
20 transcripts of the person or persons who
21 were involved in the incident, correct?

22 A. I don't think I said that
23 exactly. It's important but not
24 necessarily always the case.

25 Q. Well, in a case like this,

1 ANDREW FOLEY

2 obviously, as the expert, you weren't
3 there, you didn't see what happened,
4 correct?

5 A. Correct.

6 Q. And in this particular case we
7 did have a video, correct?

8 A. Correct.

9 Q. And you did review the video,
10 correct?

11 A. Correct.

12 Q. Now, in talking to plaintiff's
13 counsel, at any point in time did you ever
14 ask counsel, by the way, were there ever
15 any depositions in this case, sworn
16 testimony in this case from the plaintiff?

17 A. I did not.

18 I -- I would assume they would
19 send them to me when they had them.
20 Numerous cases where that hasn't occurred
21 yet, usually I get sent them when they
22 occur or shortly afterwards.

23 Q. Well, were you ever sent any
24 depositions of the defendants in case?

25 A. No.

1 ANDREW FOLEY

2 Let me check. Sorry.

3 I do not believe I received any
4 depositions in this case.

5 Q. Now, in this particular case,
6 what is your understanding as to what
7 happened to the plaintiff?

8 A. So my understanding is he was
9 placing meat into the grinder, and in the
10 process of shoving it across the tray and
11 pushing it down into the tube, he pushed
12 it in -- either his sleeve got caught or
13 his hand got caught and was ingested into
14 the grinder.

15 Q. Where are you getting this
16 information from?

17 A. So there's the video and there's
18 also -- I mean, the video -- that's
19 probably the big source and -- so, yes,
20 basically from the video and from the --
21 was it the disclosures, initial
22 disclosure, from the documents that I have
23 that describe the incident?

24 So there's an initial
25 disclosure. Let's see. But predominantly

1 ANDREW FOLEY

2 from the video and photographs and from
3 seeing the machine itself.

4 Q. Let's first talk about the video
5 itself, right? You did look at the video,
6 correct?

7 A. Correct.

8 Q. And you indicated in your report
9 that you did in fact look at the video,
10 right?

11 A. Correct.

12 Q. And that video is a fairly
13 critical piece of evidence; would you
14 agree?

15 A. It's very instructive, yes.

16 Q. Now, unfortunately --

17 MR. REDD: Strike that.

18 Q. In that video, can you actually
19 see the machine?

20 A. You can see part of machine, you
21 can't see it all.

22 Q. What part of the machine can you
23 see in the video?

24 A. The tray. Basically the tray
25 outside of the actual tube where the

1 ANDREW FOLEY

2 grinder is.

3 Q. You can't see the tube where the
4 meat gets fed into, right?

5 A. Not initially. At the end of
6 the video, I think you can see it as
7 they've taken it apart and leave the room.
8 You can probably see the grinder head.

9 Q. So post-accident, some workers
10 are able to disassemble part of the machine,
11 and you see that machine leaving the
12 picture with the plaintiff, correct?

13 A. Correct.

14 Q. Tell me if I'm wrong, sir,
15 Doctor, that video does not actually show
16 us the safety guard -- it doesn't show us
17 the meat tray in the area of the hole
18 where the meat is pushed down during
19 operation.

20 Is that a fair statement?

21 A. That is a fair statement,
22 correct.

23 Q. And you also can't see in the
24 video the warnings signing, correct?

25 A. No, no.

1 ANDREW FOLEY

2 Q. Nor can you see the on/off
3 button, correct?

4 A. I don't believe so, no.

5 Q. Nor can you see the headstock,
6 correct?

7 A. Correct.

8 Q. Nor in that video do we actually
9 ever see the plaintiff's hand in proximity
10 to the opening where the meat is fed.

11 Is that a fair statement, sir?

12 A. Correct.

13 Q. So it's a fair statement that we
14 don't know exactly what transpired in the
15 area of the hole and plaintiff's actions
16 near the hole at the time he met with his
17 accident? Is that a fair statement,
18 Doctor?

19 A. You don't see the hand going
20 into the hole, but you do see him shoving
21 the meat down the tray, but you don't see
22 his hand going into the tube.

23 Q. Right. You see him -- on one
24 side of the tray there's meat, and you see
25 the hand go to the meat, push towards the

1 ANDREW FOLEY

2 other side of the tray towards the
3 opening? You see that, correct?

4 A. Correct.

5 Q. But in the video we don't see
6 the actual opening during that process,
7 correct?

8 A. Correct.

9 Q. Because we can't see exactly
10 what happened in the area of the hole,
11 would you agree, Doctor, that as an expert
12 coming in to testimony about the
13 reconstruction of this accident, that it
14 might be a good idea to ascertain if the
15 plaintiff himself has given sworn
16 testimony as to what exactly happened to
17 him that day? Would you agree?

18 A. That would be useful, correct.

19 Q. So at any point in time from the
20 time you got this case months ago to the
21 time you're testifying here today, did you
22 ever ask plaintiff's counsel, by the way,
23 was the plaintiff ever deposed in this
24 case? Did you ever ask him that?

25 A. I did not.

1 ANDREW FOLEY

2 Q. Did he ever tell you that the
3 plaintiff was deposed not once but on two
4 occasions in this case?

5 A. No.

6 Q. Did you ever learn at any point
7 in time that there were other persons in
8 the room with the plaintiff at the time he
9 met with his accident?

10 A. Did I ever -- can you ask the
11 question again?

12 Q. Did you ever learn, okay, that
13 there were other persons in the room where
14 plaintiff was at the time he met with his
15 accident?

16 A. From the video you can see there
17 are other people in the room at the time,
18 correct.

19 Q. Did you ever ever ascertain or
20 make inquiry about who those persons were?

21 A. No.

22 Q. Did you ever attempt to
23 interview any of the other persons who
24 were in the room at the time the accident
25 occurred?

1 ANDREW FOLEY

2 A. No.

3 Q. Did you ever actually go to the
4 space where the accident occurred?

5 A. No.

6 Q. Do you know the configuration of
7 the room where the accident occurred?

8 A. From photographs I can see where
9 the meat grinder is in relation to the
10 tray and what position it is in in the
11 room.

12 Q. Are you aware that there was a
13 person, a coworker, in this case -- his
14 name is Khusen Nosirovich,
15 N-O-S-I-R-O-V-I-C-H, an experienced
16 butcher -- who was present that day who
17 testified under oath in this case?

18 A. I'm aware, yes.

19 Q. Did you ever ask plaintiff's
20 counsel whether any other persons besides
21 the plaintiff were deposed in this case?

22 A. I did not.

23 Q. Would you agree that it would be
24 a good idea to obtain and evaluate all
25 sworn testimony from persons who were

1 ANDREW FOLEY

2 present in the room at the time the
3 accident occurred before you testified
4 about causation in this case?

5 A. It would help, correct.

6 Q. Sir, going once again to your
7 report, and more specifically let's go to
8 page six of the report --

9 A. Okay.

10 Q. -- there's three photographs
11 that are seen on that page, right?

12 A. Photographs on page seven?

13 Q. I'm sorry. What I have is page
14 six. There appears to be three
15 photographs at the top?

16 A. Okay, yeah. Sorry.

17 MR. REDD: Peter, can you put
18 that up, please, Exhibit G, page six?

19 Q. Doctor, could you please take a
20 look at this page?

21 A. Correct. Yep.

22 Q. These are photographs that you
23 imbedded into your report?

24 A. Yes.

25 Q. Now, are these stills that were

1 ANDREW FOLEY

2 taken from the video itself?

3 A. Yes.

4 Q. Can you tell us, sir, why you
5 put these three pictures in this report?

6 A. So the first one is to show the
7 plaintiff, Mr. Khusenov here, the meat
8 behind him. I mean, you cannot see the
9 full -- the tray here, but you can see the
10 gentleman in the video, and you can see
11 that his action is consistent with pushing
12 the meat into the tray. And then -- so
13 that goes on for probably 50 or so
14 seconds.

15 And then in the text I explain
16 all of a sudden he drops out of the
17 screen. This would be consistent with
18 when his hand went into the machine.

19 And then you see the two
20 coworkers coming over and reaching around
21 him trying to either extricate or switch
22 the stop button off or basically try to
23 assist him.

24 Q. Looking at that page again, and
25 more specifically the photograph in the

1 ANDREW FOLEY

2 upper left-hand corner, the first photo,
3 there appears to be a white table.

4 Do you see that?

5 A. Yes.

6 Q. There appears to be some meat
7 there?

8 A. Yes.

9 Q. To your understanding, is that
10 some kind of a prep table?

11 A. That would be -- that's what it
12 looks like, yes.

13 Q. And that's the place where the
14 workers could cut up the pieces of meat,
15 correct?

16 A. I would assume so, yes.

17 Q. Once they cut up those pieces of
18 meat, they would transfer those pieces
19 onto the meat tray.

20 Is that a fair statement?

21 A. Correct.

22 Q. Now, going to the next page,
23 page seven, do you see that?

24 A. Yes.

25 Q. That's another still taken from

1 ANDREW FOLEY

2 the video, correct?

3 A. Correct.

4 Q. Now, in this particular picture,
5 we see what appears to be a metal tray.

6 Do you see that?

7 A. Yes.

8 Q. And in the metal tray appears to
9 be -- what's on the left-hand side of the
10 tray?

11 A. It's meat products. I assume
12 it's the stuff that's going to go into the
13 grinder. So probably the ribs or -- it's
14 definitely some kind of meat product.

15 Q. And we appear to see the
16 plaintiff in that picture?

17 A. Yes.

18 Q. And he's bent over?

19 A. Correct.

20 Q. Now, that meat tray that we see
21 in the photograph, it's been detached from
22 the power cabinet, correct?

23 A. Correct.

24 Q. Now, besides the tray that was
25 detached from the power unit, to the best

1 ANDREW FOLEY

2 of your knowledge and in your expert
3 opinion, did they also remove the
4 headstock with the tray?

5 A. Yes.

6 Q. Fair to say that in order to
7 remove the tray, one would have to remove
8 the headstock, right?

9 A. Yes, in this case. His hand
10 is -- it's still in there, it's stuck, and
11 it goes through the tray.

12 Q. Now, in order to -- have you
13 looked at all the materials on the
14 machine, the product manual?

15 A. (No response.)

16 Q. In order to remove the tray and
17 headstock from the power unit or cabinet,
18 how would one do that?

19 A. So there's a -- basically a
20 threaded T. It's like a T with a thread
21 on it that actually locks into the
22 headstock that locks it to the power head.

23 So you would have to turn that
24 clockwise, loosen that off, and then move
25 the headstock slightly forward and free of

1 ANDREW FOLEY

2 the power head.

3 Q. How many headstock knobs are
4 there?

5 A. There's just the one.

6 Q. You sure there's not one on the
7 other side?

8 A. I'm pretty sure there's just the
9 one.

10 MR. REDD: Peter, can you go to
11 the next page, please, in the report?

12 Q. Again, we're looking at Exhibit
13 G, correct?

14 A. (No response.)

15 Q. Now, at the bottom there's a
16 photograph -- do you see that?

17 A. Yes.

18 Q. -- of the machine?

19 What does that photograph
20 represent?

21 A. That is the machine in question,
22 the KG-32 grinder.

23 MR. ZOHAR: Just for the record,
24 just so we know, we're looking at the
25 page which is numbered at the bottom

1 ANDREW FOLEY

2 eight.

3 MR. REDD: Yeah, page 8 of
4 Exhibit G.

5 BY MR. REDD:

6 Q. So looking at the photograph at
7 the bottom of page eight of Exhibit G --
8 if we can perhaps walk through this
9 together -- at the top of the photograph
10 there appears to be the meat tray,
11 correct?

12 A. Correct.

13 Q. And on the left-hand side of the
14 meat tray, there appears to be something
15 in the tray. What is that?

16 A. So there's a guard and --
17 unfortunately, it's white on white
18 background, but there's also basically a
19 plunger or pusher that's inserted into the
20 central hole of the guard.

21 Q. That's in order to push meat
22 down through the guard, correct?

23 A. Correct.

24 Q. And then below the plunger we
25 have a vertical section of steel which is

1 ANDREW FOLEY

2 part of the headstock, correct?

3 A. Correct.

4 Q. And then there's a horizontal
5 portion of the headstock, as well,
6 correct?

7 A. Correct.

8 Q. And we see the one headstock
9 knob that you mentioned, correct?

10 A. Correct.

11 Q. And then there also appears to
12 be some sort of a plate on the left -- on
13 the left-hand side of the machine --

14 A. Yes.

15 Q. -- by the headstock?

16 So it's your understanding that
17 the worker would put the meat in the tray,
18 and then in an ideal world would push the
19 meat towards the guard, correct?

20 A. Correct.

21 Q. And then the meat would be
22 pushed under the guard, and then a plunger
23 would be used to push the meat down into
24 the throat of the headstock.

25 Is that a fair statement?

1 ANDREW FOLEY

2 A. I think the intent is to use the
3 plunger for both operations, pushing it
4 under the guard and also down.

5 Q. And the idea is that the meat
6 goes down the vertical section and then it
7 encounters something, correct?

8 A. Correct.

9 Q. What does the meat encounter
10 when it goes through the vertical section
11 of the headstock?

12 A. There's an auger at the bottom.
13 It's like giant screw.

14 Q. And it turns, correct?

15 A. Correct.

16 Q. When it turns, the meat that's
17 being placed in that vertical section,
18 what happens to it?

19 A. It's pushed from the right of
20 that picture to the left into a rotating
21 blade, a knife, and then after it's sliced
22 by the knife, it then goes through a
23 series of holes and creates -- 3/16ths
24 holes and comes out --

25 (Crosstalk.)

1 ANDREW FOLEY

2 Q. I'm sorry.

3 A. Okay.

4 Q. Are there different size blades
5 that go inside the headstock?

6 A. I'm not so sure about the
7 blades. There are different size holes
8 that would go on the outside, I think.

9 Q. So the different size holes
10 would determine how the meat was going to
11 be pushed out, correct?

12 A. And beside the diameter of the
13 minced meat, correct.

14 Q. So if you wanted hamburger meat
15 versus minced meat, you would have to
16 change that up, right?

17 A. Yeah. I think there's a choice
18 of two.

19 Q. Looking at the photograph, we
20 also see prominently displayed on the
21 cabinet Pro-Cut, right?

22 A. Correct.

23 Q. And we also see to the left of
24 that what appears to be a warnings label,
25 correct?

1 ANDREW FOLEY

2 A. Correct.

3 Q. And there's also sticker below
4 that, as well?

5 MR. REDD: Strike that.

6 Q. Now, on the same corner by the
7 warning sticker, there's on/off buttons,
8 correct?

9 A. They're around the corner, 90
10 degrees.

11 Q. So on the opposite side of the
12 corner but on the same corner, right?

13 A. Same corner, around the corner,
14 correct.

15 Q. And there's two buttons there,
16 right?

17 A. Yes.

18 Q. And they're located directly
19 adjacent to the warning sticker, correct?

20 A. Around the corner from it, but
21 yes, correct.

22 Q. If you had to estimate the
23 distance, it's about, what, an inch or
24 two?

25 A. Correct.

1 ANDREW FOLEY

2 Q. On a different face obviously,
3 right?

4 A. Yes.

5 Q. And there's two buttons side by
6 side, correct?

7 A. Correct.

8 Q. And those two buttons are
9 aligned with one another?

10 A. Correct.

11 Q. On the same horizontal line, I
12 would say?

13 A. Yes.

14 Q. And on the two buttons there's
15 -- the one on the left is for what?

16 A. That's -- it's not shown in the
17 black and white, but that would be a green
18 start button.

19 Q. And to the right of that, closer
20 to the warning label, is another button.

21 What is that for and what color
22 is it?

23 A. That's a stop button which is
24 also -- which is red.

25 Q. And it's a raised button,

1 ANDREW FOLEY

2 correct, the red button?

3 A. They're both raised off the
4 surface. So they both come off the
5 surface. The red is slightly -- so
6 they're both -- they both stick up from
7 the surface probably half an inch, and
8 then the red one is slightly raised above
9 the enclosure of the button by an eighth
10 of an inch, 16th of an inch or something.

11 Q. Okay. Now, in order for a
12 person to energize this particular
13 machine, how would they do that?

14 A. So they would have to plug it in
15 to the three-phase power plug. So this is
16 not a regular plug, this is a three-phase.
17 It's a three-horsepower motor, so it needs
18 a special -- 220-volt supply.

19 Once it's plugged in, then it's
20 literally a matter pressing the green --
21 once it's assembled, pressing the green
22 button.

23 Q. Green for go, right, start?

24 A. Correct.

25 Q. And if one wants to stop the

1 ANDREW FOLEY

2 machine, how would one do that?

3 A. You'd reach down and press the
4 red button.

5 Q. In order to do that, you would
6 have to see -- you'd have to see where
7 your hand is, right, so you know where the
8 button is, right?

9 A. Ideally. I don't believe you
10 can see the button when you're standing in
11 the operating position, though.

12 Q. Well, at some point, if someone
13 is going to operate this machine, they
14 have to understand where the start and
15 stop buttons are, right?

16 A. If they want to switch it on and
17 switch it off, yeah.

18 Q. In order to do that, one would
19 have to look with your own two eyes,
20 right, onto the buttons that you're trying
21 to push, right?

22 A. Ideally you would look.
23 Sometimes you might just reach down and
24 just press where the buttons are, if
25 they're that way inclined.

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2 Q. Well, at some point -- let's
3 assume somebody is using the machine for
4 the first time.

5 In order to figure out where the
6 start and stop buttons are, they would
7 have to actually engage their eyeballs and
8 look at those two buttons, right?

9 A. Yes.

10 Q. Would you agree, during that
11 process --

12 (Crosstalk.)

13 Q. Would you agree, during that
14 process, whether it was the first time
15 they operated it or the three hundredth
16 time they operated it, they'd have to know
17 where the buttons were by seeing where the
18 buttons were?

19 A. No. I think if you use this
20 machine constantly, you will probably just
21 reach down and not look at the buttons to
22 switch it on.

23 Q. What are you basing that on?
24 Psychology?

25 A. Probably -- human nature,

1 ANDREW FOLEY

2 practiced familiarity with the machine.

3 Q. But you never operated a machine
4 like this, right?

5 A. Small mechanical machines I've
6 operated; lathes, mills, those things.

7 Q. Will you give me this, though:
8 At least one time, when an operator wanted
9 to operate this machine, they would
10 actually have to look at those buttons to
11 know where they were?

12 A. If you're not familiar with the
13 machine, you'd have to know --

14 Q. You can't engage a start or stop
15 button unless you know where it is,
16 correct?

17 A. Right.

18 Q. Would you agree, if you're
19 engaging either the start or stop button
20 for the first time, it would be pretty
21 hard not to see the warning label, which
22 we see literally an inch from the stop
23 button? Would you agree with that?

24 A. Yes.

25 Q. Now, in this case, you've

1 ANDREW FOLEY

2 rendered an opinion about this machine,
3 correct?

4 A. Yes.

5 Q. I think your opinion breaks down
6 into a couple different areas, right?

7 A. Yes.

8 Q. Give me one moment.

9 MR. REDD: Peter, if you would
10 go to page 23.

11 MR. URRETA: Okay.

12 Q. Sir, can you see the page, page
13 23?

14 A. Yes.

15 Q. I think you offer up a total of
16 six areas of review, correct?

17 A. Correct.

18 Q. It carries onto the next page,
19 page 24, right?

20 A. Correct.

21 Q. Let's go at this in seriatim
22 fashion. Read to us your first point
23 here.

24 A. So Opinions Resulting From This
25 Review. Warning signal words in the

1 ANDREW FOLEY

2 manual do not clearly state the danger
3 posed by the grinder. Warning signs need
4 to be re placed with --

5 (Reporter clarification.)

6 A. I'm sorry. Warning signal words
7 in the manual do not clearly state the
8 danger posed by the grinder. Warning
9 signs need to be replaced with danger
10 signal words and a clear description that
11 the worm screw will ingest and grind the
12 user's hand and arm if the user inserts
13 his hand into the down chute, causing
14 catastrophic damage and/or death.

15 Q. Okay. So let's start there.

16 Now, this first point is
17 referencing the manual itself, correct?

18 A. Correct.

19 Q. And I believe, and tell me if
20 I'm wrong, your first point here is just
21 about the manual, right?

22 A. Correct.

23 Q. Now, in this particular case, I
24 know you didn't -- are you aware that my
25 client was deposed in this case?

1 ANDREW FOLEY

2 A. No.

3 Q. Are you aware that the office
4 manager for Karzinka, Hira Akram,
5 testified in this case?

6 A. I am. I'm sorry, the
7 Prokraft -- the gentleman, I am aware that
8 he was deposed, as well.

9 Q. Also, there's a lady named Hira,
10 H-I-R-A, Akram, A-K-R-A-M, who's an office
11 manager for Karzinka who was also deposed
12 in this case.

13 Are you aware of that now?

14 A. Yes.

15 Q. Now, in terms of this manual
16 that you're referencing in the first
17 point, are you aware that there was in
18 fact a manual in the boxed materials that
19 came with this machine when it was
20 purchased?

21 A. I don't know for a fact that
22 that was the case, but that would not
23 surprise me, correct.

24 Q. In this particular case, are you
25 aware whether the plaintiff himself ever

1 ANDREW FOLEY

2 looked at or reviewed the operator manual
3 that came with this machine at the time of
4 purchase?

5 A. From his deposition, which is
6 quoted in the defendants' records, he says
7 he didn't.

8 Q. Is that significant to you as an
9 expert in this case?

10 A. It's -- it's significant in that
11 he didn't look at it. Am I surprised?
12 Not particularly.

13 Q. Now, in terms of the plaintiff,
14 do you know how long he worked for
15 Karzinka before the accident occurred?

16 A. I think it's several months. I
17 can't remember the exact number.

18 Q. Was it more than six months?

19 A. I think it was about six months,
20 is my understanding. I can't remember the
21 exact number.

22 Q. I know you didn't look at his
23 deposition transcript, but are you aware
24 how many times he utilized this particular
25 machine, used it?

1 ANDREW FOLEY

2 A. I'm not aware how many times he
3 actually used it.

4 Q. Would it be significant for you
5 to know, as an expert, whether he used it
6 one time, this was his first time, whether
7 he used a hundred times, a thousand times,
8 or something else?

9 A. It doesn't really make a
10 difference to the injury that he
11 sustained. So no, it doesn't really make
12 a difference.

13 Q. So his experience working on
14 this particular machine is of no moment to
15 you as an expert in this case?

16 A. Is it significant? I'm trying
17 to think of an answer to that. He had not
18 used it for years. So, again, how would
19 you judge -- how long he's been there, how
20 many times he's used it.

21 Most of these accidents happen
22 with people that haven't used the machine
23 very often, the ones that I've been
24 looking at.

25 So the longer he'd been using

1 ANDREW FOLEY

2 it, the less likely, I think, the accident
3 would have happened perhaps.

4 Q. Would it surprise you in this
5 case if he used the machine approximately
6 two or three times a week for about six
7 months?

8 A. No.

9 Q. Now, you believe there's a
10 fundamental difference between the word
11 "warning" and "danger," correct?

12 A. There is.

13 Q. Somehow, if there was a sticker
14 on the side of the machine that said
15 Danger as opposed to Warning, it would
16 have made a difference in the outcome of
17 this case?

18 A. There's many stages in this
19 accident prevention. We have a thing
20 called the "pyramid." And so there's a
21 reason we do these things. There's a
22 reason why we have warning signs and
23 danger signs.

24 Whether or not they have an
25 effect on a particular case or

1 ANDREW FOLEY

2 circumstance, it's hard to say. But on
3 balance, if there's enough of this stuff
4 going on, it will help.

5 It's the reason we put warning
6 stickers and danger stickers on machines.
7 So whether or not it helps this particular
8 case, I don't know, but there's a reason
9 we do it, industry does it.

10 Q. Did you ever ask the plaintiff
11 if he saw a warning sticker or a danger
12 sticker on the subject machine?

13 A. I did not ask him, no.

14 Q. Do you think it would be
15 important to know the answer to that
16 question if you're going to come in and
17 offer testimony as an expert in this case?

18 A. The answer, I believe, is in the
19 other report from the deposition.

20 I believe they said that he had
21 seen it but didn't read it. So I don't
22 think he paid any attention to it.

23 Q. But you generated your report
24 before you received the defendants'
25 expert's report.

1 ANDREW FOLEY

2 Is that a fair statement?

3 A. Yes.

4 Q. Do you know one way or the other
5 whether -- by the way, do you know if the
6 plaintiff -- do you know what language --
7 what his primary language is?

8 A. I believe it's Russian,
9 Ukrainian or Russian. Sorry.

10 Q. Do you know if he can speak
11 English?

12 A. Yes, he can, to a degree, is my
13 understanding.

14 Q. Do you know if he can read
15 English?

16 A. I don't know.

17 Q. In this particular case --

18 MR. REDD: Actually, Peter, I
19 want to go to the exhibit that shows
20 the warning sticker. That's going to
21 be -- I just lost my screen.

22 Peter, can you put up the
23 exhibit that has the warning sticker,
24 and tell us how it's been marked?

25 MR. URRETA: I have the warning

1 ANDREW FOLEY

2 sticker and it's Exhibit L.

3 (Defendant's Exhibit L,
4 photograph of warning sticker, marked
5 for identification, as of this date.)

6 MR. REDD: If you can make that
7 as big as possible for all of us.

8 BY MR. REDD:

9 Q. Doctor, can you see the Exhibit
10 L which has been marked and put on the
11 screen for your consideration?

12 A. Yes.

13 Q. Now, this is the warning sticker
14 that was present on the machine in close
15 proximity to the red stop button that we
16 talked about before, correct?

17 A. Correct.

18 Q. In fact, in this exhibit you can
19 actually see the red button, right?

20 A. That's the casing. The actual
21 button is inside that, but yeah.

22 Q. And you can also see the green
23 button next to it, at least a portion of
24 it, right?

25 A. Correct.

1 ANDREW FOLEY

2 Q. Now, in terms of this particular
3 sticker, there's two -- there are two
4 warnings that are in writing, correct?

5 A. Correct.

6 Q. The first column is in Spanish,
7 correct?

8 A. Correct.

9 Q. And the third column on the
10 right side has all the warnings in
11 English, correct?

12 A. Correct.

13 Q. And it has the word "warning"
14 which is embedded in an orange box,
15 correct?

16 A. Correct.

17 Q. By the way, is it significant
18 that the warning is put on an orange
19 field?

20 A. Yeah. So there's a standard for
21 these signs. It's quite a big deal.
22 There's a standard that describes how
23 these signs, the three columns, that kind
24 of thing, how it should be laid out, the
25 size of the warning signs. There's an

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2 ANSI -- American National Standard

3 Institute standard for this.

4 Q. So the standard requires under
5 certain situations that certain colors be
6 used and certain words be used, right?

7 A. Correct.

8 Q. In your expert opinion, do they
9 use orange in order to grab somebody's
10 attention as they're going near the
11 sticker?

12 A. Yes.

13 Q. There's also next to the word
14 "warning" what appears to be a yellow
15 triangle, right?

16 A. Correct.

17 Q. Does the yellow triangle have
18 any significance in your area of
19 expertise?

20 A. The symbol is the hand inside.
21 That's probably the more relevant warning.

22 Q. I'm just asking generally about
23 the use of yellow triangles.

24 A. I don't think there's anything
25 particular significant with that. The

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2 yellow, it's the warning sign. You can
3 see the exclamation mark next to the
4 warning; there's a yellow triangle.

5 Q. Again, to the best of your
6 understanding, is it in yellow in order to
7 draw someone's attention towards it?

8 A. Yes.

9 Q. And in the English section, the
10 writing on the right-hand side, that third
11 column, could you please read off for us
12 what those warnings state?

13 A. Moving parts can crush and cut.
14 Keep hands and fingering out of grinder
15 head. Do not use hands to feed product
16 into machine, use the stomper or pusher.
17 Do not operate if safety guard is removed
18 or damaged. Disconnect power before
19 cleaning or servicing. Do not allow
20 untrained, unqualified personnel or
21 children to operate this equipment. Read
22 instruction manual for proper use and
23 maintenance.

24 Q. Now, let's direct our attention,
25 if you will, towards the middle column.

1 ANDREW FOLEY

2 Okay?

3 A. Okay.

4 Q. There appears to be some
5 pictographs there?

6 A. Correct.

7 Q. Let's talk about the one at the
8 top first.

9 This is, again, a yellow
10 triangle, correct?

11 A. Correct.

12 Q. And inside the yellow triangle
13 is what appears to be what?

14 A. A hand and a rendition of a
15 screw, an auger.

16 Q. And at the bottom of the --
17 below the auger -- what's below the auger
18 in that yellow triangle?

19 A. I think that's part of the hand
20 going underneath it.

21 Is that what you're talking
22 about?

23 Q. Yeah. Does it appear to be,
24 like, fingers possibly removed?

25 A. Correct.

1 ANDREW FOLEY

2 Q. And that would be a warning,
3 right?

4 A. Correct.

5 Q. One would not need to understand
6 English or Spanish or even Russian or
7 Ukrainian or Uzbekistani to understand
8 what that's telling you?

9 A. Yeah. That's the intent.

10 Q. The intent there is don't put
11 your hands near the auger, right?

12 A. Right.

13 Q. Let's drop down to the second
14 pictograph there.

15 What do we have there?

16 A. So this one -- it's not probably
17 as clear as the other one, but it's a
18 no-entry sign effectively overlaid on top
19 of a pictograph of a person -- again,
20 looks like their arm going down the chute
21 next to the machine so you could associate
22 that with this machine.

23 But don't put your hand down the
24 chute is what's it's trying to get across.

25 Q. Right. That red circle with the

1 ANDREW FOLEY

2 line through it, that's a universal "don't
3 do this" sign? Would you agree with that?

4 A. Correct.

5 Q. And that's used in the United
6 States, correct?

7 A. Yes.

8 Q. And in the United Kingdom,
9 right?

10 A. Yes.

11 Q. And across the world, right?

12 A. Yeah. Yes.

13 Q. Let's drop down to the third
14 pictograph.

15 Do you see the blue circle?

16 A. Yeah, just about.

17 Q. What's depicted in the blue
18 circle?

19 A. I can't actually see that one
20 very well, I'm afraid.

21 MR. URRETA: Let me bring up
22 Exhibit M. I think it's a clearer
23 picture.

24 Q. Going to Exhibit M of today's
25 date --

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2 A. I think I've got it. It's the
3 pusher going down --

4 (Defendant's Exhibit M,
5 photograph of label, marked for
6 identification, as of this date.)

7 MR. REDD: If you could enlarge
8 that, Peter, it would be great.

9 BY MR. REDD:

10 Q. Doctor, is that a better visual
11 of the exhibit?

12 A. Yes.

13 Q. Would it be fair to say that the
14 blue circle denotes the guard push-stick
15 and a hand on the push-stick indicating
16 that it's being used inside the guard?

17 A. Correct.

18 MR. ZOHAR: Just objection.
19 Just, if you can have an open-ended
20 question as opposed to describing what
21 you see in general.

22 This label that's being shown
23 now is not from the machine, as
24 opposed to the last one that was shown
25 that was from the actual machine.

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2 Just for the record.

3 BY MR. REDD:

4 Q. So the sticker we're looking at
5 now, does it vary in any way, shape or
6 form to the actual sticker that we saw on
7 the actual machine, and more specifically
8 the power cabinet?

9 A. No, I don't think so.

10 There is a sticker underneath
11 this one, the Attention, that wasn't on
12 the original one, I don't think.

13 Q. My question was not directed
14 towards the sticker below. I agree that
15 the Attention sticker is not what we're
16 talking about. We're talking about the
17 three-column warning.

18 Okay?

19 A. Yeah. That looks very similar,
20 yes.

21 Q. Just so the record is crystal
22 clear, this exhibit that we're looking at,
23 that three-column warning is exactly the
24 same sticker that was present on the
25 machine cabinet on the machine that was

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2 involved in the subject accident.

3 Is that a fair statement?

4 A. Yes.

5 Q. Now, you indicated that you did
6 look at the expert report that was
7 generated by the PE, Dr. Pfreundschuh?
8 You did look at his report, correct?

9 A. Correct.

10 Q. In that report, did you see that
11 it was his expert opinion that this
12 warning sticker was fully compliant with
13 ANSI Section Z535.4?

14 A. In the sense that the texts are
15 the right sizes and -- yes, as far as the
16 placement and the warning sign. Then, you
17 know, that doesn't say anything about
18 that, but -- for what it is and the size
19 of it, that's compliant, correct.

20 Q. So do you agree that this
21 sticker, in your expert opinion, is
22 compliant with ANSI Section Z535.4?

23 A. As far as it's designed,
24 correct.

25 Q. The issue that you take, it

1 ANDREW FOLEY

2 should have been deemed to be a danger as
3 opposed to a warning?

4 A. Right.

5 Q. In your ideal world, this
6 sticker would have not had the word
7 "warning," it would have had the word
8 "danger," correct?

9 A. It's not my ideal world. It's
10 just the intention of these warning signs.

11 In an ideal world you remove the
12 hazard. This is third level in trying to
13 protect people. So the danger sign is
14 what I believe this machine justified.

15 MR. REDD: Peter, if we can go
16 back to his report. I think it's G,
17 page 13.

18 Q. Doctor, do you see we're on page
19 13 now?

20 A. Correct.

21 Q. In the upper portion -- the top
22 of the page, there's a section that says
23 Warning, correct? There's four
24 categories: Danger, Warning, Caution,
25 Notice, correct?

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2 A. Correct.

3 Q. Now, under Warning, okay --
4 which is the one that we have on our
5 sticker, right?

6 A. Yes.

7 Q. With the orange background and a
8 yellow triangle, right?

9 A. Yes.

10 Q. And for the Warning category,
11 what does it state?

12 A. Warning indicates a hazardous
13 situation which, if not avoided, could
14 result in death or serious injury.

15 Q. So would you agree that if one
16 puts one's hand into the opening while the
17 machine is operating, that would present
18 as a hazardous situation?

19 A. I believe it will, which is why
20 the danger sign is more relevant rather
21 than could. I don't think there's any
22 could about it. It will destroy your hand
23 if you put it in there.

24 Q. If you put it in, right?

25 A. Well, that's what the warning

1 ANDREW FOLEY

2 sign is for. So will result in death or
3 serious injury. It's not, if you put it
4 in there, it could chew your hand up; if
5 you put it in there, it will.

6 That's the reason why I think
7 the danger sign is more appropriate.

8 Q. But the warning here says that,
9 if you don't avoid this hazard, it could
10 result in death, right?

11 A. Could. I would argue that it
12 will result in death or serious injury.

13 Q. And it could result in serious
14 injury, correct?

15 A. It will.

16 Again, the whole point of these
17 warnings -- it's kind of important --
18 there's only subtle differences between
19 them. It's the difference between will
20 and could. If you put your hand into
21 that, it will chew it up. There's no
22 could about it.

23 Q. Let's go to the Danger -- the
24 highest level, Danger, right?

25 Basically it says here, if you

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2 use it improperly, it will result in death
3 or serious injury, right?

4 And the big change here is the
5 word "will" as opposed to "could,"
6 correct?

7 A. Correct.

8 Q. Now, sir, I want you to assume
9 that we've got sworn testimony in this
10 case that the plaintiff, Mr. Khusenov,
11 used the machine without a guard by
12 pushing meat into that opening on at least
13 30 occasions before meeting with his
14 accident.

15 If we were to assume it was 30
16 times, in the prior 29 times he used the
17 machine, did it result in his death or
18 serious injury?

19 A. No.

20 Q. Thank you.

21 MR. REDD: Anybody need a short
22 break?

23 Miss Reporter, how are you
24 doing?

25 THE COURT REPORTER: Just a

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2 quick restroom break.

3 (Brief recess taken.)

4 BY MR. REDD:

5 Q. Doctor, I want to talk about the
6 hazard that's being referred to in the
7 warnings and the danger signs.

8 The hazard that's being talked
9 about --

10 MR. REDD: Strike that.

11 Q. The hazard that's being referred
12 to with this machine is presented by --
13 that presents with the meat grinder is the
14 risk of amputation if one gets his or her
15 hand caught in the unguarded grinder.

16 Do you agree with that?

17 A. Yes.

18 Q. Is it your opinion that the word
19 "danger" would have appropriately
20 communicated the hazard presented by this
21 meat grinder?

22 A. In the spirit of the warning and
23 the danger sign, yes. It's better than
24 the warning sign.

25 Q. I know you haven't seen the

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2 plaintiff's transcript, but at this point
3 in time, I want to go to certain pages in
4 that transcript and ask your thoughts
5 about his testimony as it relates to the
6 warning sticker on this machine.

7 MR. REDD: Peter, can you please
8 pull up the transcript from the
9 deposition of February 7th, 2022?

10 Peter, what exhibit is that?

11 Peter, your audio might be off.

12 MR. URRETA: I can hear you.

13 MR. REDD: We're trying to pull
14 up the transcript from February 7th,
15 2022, if you can kindly tell us how it
16 was marked for today.

17 MR. URRETA: January 26th, 2022?

18 MR. REDD: No, I think it was
19 February 7th of 2022, was the date of
20 the...

21 MR. URRETA: We're going to mark
22 that as Defendant's -- it will be
23 Defendant's ZG.

24 (Defendant's Exhibit ZG,
25 transcript, marked for identification,

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2 as of this date.)

3 BY MR. REDD:

4 Q. If we go to the exhibit and more
5 specifically to page 17 of the transcript,
6 Doctor, since you haven't seen plaintiff's
7 transcript, I'm going to read some pages
8 to you, and then after I'm done reading
9 the pages in the transcript, I'm going to
10 ask you a question.

11 Okay?

12 A. All right.

13 Q. Going to page 17 at the bottom
14 of the page, line 24, it reads:

15 "Question: Were you careful
16 when" -- this is the deposition of the
17 plaintiff. Again, on February 7th, 2022.

18 "Question: Were you careful
19 when you were putting the meat in the
20 grinder?"

21 Page 18, top of the page.

22 "Answer: Yes, of course. I was
23 very cautious, and I tried to put it
24 slowly, trying to take care of my wrist,
25 my fingers.

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2 Question: Why were you very
3 cautious, trying to take care of your
4 fingers?

5 Answer: It's commonsense that
6 under my hand under high-speed
7 accelerating stuff is working. Of course
8 I will be cautious.

9 Question: So you knew it would
10 be dangerous to your hand and fingers if
11 you put your hand in there?

12 Answer: I didn't know that -- I
13 didn't know that this was really
14 dangerous, but I try my best to take care
15 of my fingers.

16 Question: Why did you try your
17 best to take care of your fingers?

18 Answer: It's like the same
19 question in a different way. I'm getting
20 asked again and again.

21 Question: Answer the question,
22 please.

23 Answer: It's commonsense. If
24 something working at a high speed
25 accelerating under my hand, so that's why

1 ANDREW FOLEY

2 I am cautious."

3 Page 19, next page. Colloquy at
4 the top.

5 First question, line 10:

6 "Mr. Khusenov, you understood,
7 if you put your hand too close to the
8 auger, your fingers would get cut off,
9 correct?

10 Answer: Yes, by seeing what
11 happens with the meat."

12 MR. REDD: Go to page 23.

13 Q. Top of the page, line three.

14 "Question: You did that even
15 though you understood you had to be very
16 careful because your fingers could get cut
17 off, correct?

18 Objection.

19 Answer: Yes, yes."

20 MR. REDD: Page 24, line 20.

21 Q. "Question: Each time that you
22 used that meat grinder, did you always use
23 your hand to push the meat in to make it
24 easier?

25 Answer: Yes.

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2 Question: Knowing it was
3 dangerous and your hand could be injured,
4 why did you continue using your hand to
5 push the meat in?

6 Objection.

7 Answer: This is the only
8 option. I should continue to granulate
9 this meat, to push in the meat to
10 granulate it."

11 MR. REDD: Page 27, line 16.

12 Q. "Question: You used your
13 fingers to push the meat in, correct?

14 Answer: Yes.

15 Question: Earlier you said you
16 had to be cautious when you use the meat
17 grinder because you knew your fingers
18 could get cut off.

19 Can you tell me what precautions
20 you took when you were pushing the meat in
21 with your hands?

22 Objection. Colloquy.

23 Answer: Because everyone knows
24 that this is dangerous.

25 Question: Yes. I just want to

1 ANDREW FOLEY

2 know what precautions you took to be extra
3 careful because you knew it was a
4 potentially dangerous machine.

5 Answer: Yeah, because seeing
6 how meat going through being granulated,
7 of course I tried to be cautious.

8 Question: Because you knew that
9 the meat grinder would treat your hand
10 like it would a regular piece of meat,
11 correct?

12 Objection.

13 Answer: Yes, as I understood."

14 Doctor, after hearing those
15 questions and those answers from
16 plaintiff's sworn testimony, do you agree
17 that plaintiff, based upon these sworn
18 answers, knew of the hazard presented by
19 the meat grinder prior to his accident?

20 MR. ZOHAR: First of all, I'm
21 going to object to the form of the
22 question, object to the manner in
23 which these transcripts are being
24 used, especially under the
25 circumstances that we're here for, an

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2 expert testifying about his specialty.

3 Go ahead.

4 A. I mean, I've just got a bunch of
5 segments pulled out of this report, but it
6 seems that, yeah, he was aware of the --
7 it was grinding meat, and it was dangerous
8 to his hand.

9 Q. Would you agree that if he was
10 aware of the hazard presented, that his
11 hand might get caught and ground up or
12 granulated, as he would say, whether there
13 was a danger sticker or a warning sticker
14 is of little moment? Would you agree,
15 Doctor?

16 A. The fact that stickers are there
17 changes things. It reinforces the danger.
18 But you visually can see the danger, as
19 well.

20 It doesn't discredit the use of
21 the stickers or warning signs. They do
22 add to the sense of danger.

23 Q. But if he knew that it was
24 dangerous and his hand would get caught,
25 are you saying that the sticker would tell

1 ANDREW FOLEY

2 him something more than that?

3 A. No. Again, there's a reason the
4 sticker is part of a system of things that
5 as engineers we try to put into place.
6 One of them on their own may seem trivial,
7 but in their entirety, in the thousands of
8 machines that are made, somewhere along
9 the line there's an added benefit to
10 having those stickers. That's why we put
11 them on there, and it's the intent that
12 they do help.

13 Q. But in this case, based on the
14 sworn testimony, do you think a sticker
15 would have made a difference?

16 A. How would I know? I can't read
17 his thoughts. But I think it could only
18 help; it can't do any harm.

19 Q. So we're getting into the whole
20 idea of psychology of human interaction --
21 or interfacing with a machine?

22 A. I guess that's where we're
23 going.

24 Q. I want to go back to your
25 opinion, your six points that you had. I

1 ANDREW FOLEY

2 think we're up to number three, correct,
3 on page 23 of your report, which I think
4 is Exhibit --

5 MR. REDD: Is that G, Peter?

6 A. Okay. We didn't discuss the
7 manual. We just discussed the machine,
8 yeah, but one and two have the warning
9 signs.

10 Q. Okay. So let's go to number
11 three. Could you read that opinion in
12 your report? Again, it's number three on
13 page 23.

14 A. Okay. Number three, A bigger
15 mushroom-head-type standard emergency stop
16 button needs to be added to the machine --

17 (Reporter clarification.)

18 THE WITNESS: I read too
19 quickly. Sorry.

20 A. A bigger mushroom-head-type
21 standard emergency stop button needs to be
22 added to the machine in a location that is
23 more accessible and can even be operated
24 by the user's body if an arm was to be
25 trapped, i.e., not on the side of the

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2 machine next to the worm screw. The
3 current stop button is not an emergency
4 stop button.

5 Q. Now, Doctor, an emergency stop
6 button, the idea there is you hit the
7 button, and what's supposed to happen?

8 A. So you hit the button and it
9 stops the machine.

10 Q. Do you know what the auger speed
11 was on this particular machine?

12 A. From seeing it in operation when
13 we did the inspection, it's probably of
14 the order of about 60 RPMs, 60 revolutions
15 per minute.

16 Q. You looked at the expert report
17 generated by defendants' expert, correct?

18 A. Yes.

19 Q. In there it indicates that the
20 auger was rotating at three revolutions
21 per second.

22 Did you see that?

23 A. Okay.

24 Q. Do you take issue with that
25 number?

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2 A. No. It's similar. One to three
3 doesn't make a lot of difference.

4 Q. Fair to say that if the machine
5 was unguarded and one was to get their
6 hand stuck in the auger, that the auger
7 would be moving quickly and would pull the
8 affected body part into the auger quickly?

9 A. Not particularly quickly. It
10 depends how you define quickly.

11 It will pull it in appropriate
12 to the speed of the screw. It's not
13 actually superfast. It's not like a lathe
14 or a milling machine.

15 It depends how you define
16 quickly. I don't think it's particularly
17 quick.

18 Q. Let's say the finger makes
19 contact with the auger, how quickly would
20 the finger get pulled in; in one second,
21 half a second, second and a half or
22 something else?

23 A. Again, I'm just making an
24 estimation here on the order of a second
25 or two. One thousand, two thousand -- not

1 ANDREW FOLEY

2 milliseconds but the order of a second.

3 Q. In fact, when you saw the video,
4 you don't see the actual event, but you
5 see something happen. You can see the
6 plaintiff's arm -- he's moving towards
7 the -- off-screen -- as his arm gets
8 pulled in, correct?

9 A. Correct.

10 Q. In your opinion, did that happen
11 relatively quickly based on your viewing
12 of the video?

13 A. Again, it's the definition of
14 relatively quickly. It's kind of very
15 loose.

16 Q. Let's tighten that up then.
17 Would you say it's between one
18 and two seconds?

19 A. For his whole arm, no. Probably
20 a bit longer for his whole -- for his
21 whole hand, a few seconds. Yeah, three --
22 again, I haven't done the calculations,
23 but based on the turning of the screw,
24 it's a couple of seconds probably.

25 Q. In that couple-of-seconds

1 ANDREW FOLEY

2 period, what exactly is going on with the
3 hand?

4 A. It doesn't leave a lot to the
5 imagination. Basically it's being crushed
6 between the screw and the casing, and so
7 it's literally being sliced and pushed
8 along at the same time. Crushed, should I
9 say.

10 Q. It's literally getting pulled
11 into the direction of the blades, correct?

12 A. Yeah. So the screw itself will
13 be -- the -- it will be rotating, and as
14 it's rotating, it's crushing the fingers
15 and drawing the hand in.

16 Q. As this is occurring, the auger
17 is doing precisely to the hand what it
18 does to meat that was deliberately put in,
19 right?

20 A. Yeah. The constituency [sic] is
21 similar, I suppose. The fingers probably
22 bonier than the meat, but yeah, it's
23 basically doing what it's designed to do.

24 Q. You're not a biomechanical
25 expert, correct?

1 ANDREW FOLEY

2 A. As a mechanical engineer who's
3 done some of these cases, it depends on
4 what you define as an expert. I've looked
5 at these before.

6 I don't have certifications, if
7 that's what you mean, but as much as
8 anybody that's done this job, I would say
9 I am.

10 Q. Are you familiar with a concept
11 called "perception" or "reaction time"?

12 A. Yes.

13 Q. Can you give us a working
14 definition of perception and reaction time
15 in the context of accident reconstruction?

16 A. So the easiest is to think of a
17 car accident. When you see a hazard,
18 there's a time between seeing it and
19 processing it and putting your foot on the
20 pedal.

21 It's seeing the danger, and the
22 reaction time is the time it takes you to
23 then respond to that danger.

24 Q. So breaking that down a little
25 further, you have to -- you have to see

1 ANDREW FOLEY

2 it, right, process it in your brain,
3 correct?

4 A. Correct.

5 Q. Then your brain has to make a
6 decision, and it causes a corresponding
7 reaction in your body, correct?

8 A. Correct.

9 Q. That's a mechanical kind of
10 reaction, mind to muscle to the action,
11 correct?

12 A. It's a control system, yeah. So
13 you sense and then you react.

14 Q. Now, knowing about perception
15 and reaction, whether it's a car accident,
16 an accident like this, any accident, what
17 is a -- what is a --

18 MR. REDD: Hang on a second.

19 Q. What is an average perception
20 and reaction time when confronted with an
21 emergency?

22 A. It varies on how you sense the
23 emergency, if it's visual or smelling or
24 hearing.

25 So you have to sense it, and

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2 then what you define by the reaction, is
3 the reaction reaching over and pressing a
4 button, or is it literally just moving to
5 the right to dodge an arrow or something?
6 So I can't give you an average for that.

7 Q. Is it like three to five
8 seconds, on average?

9 A. Again, it depends on what we're
10 talking about. What's the danger? How
11 are we sensing that danger, and what body
12 parts we have to move to react to that
13 danger? They're all different.

14 I mean, what scenario -- you
15 have to be more specific about what you're
16 talking about there.

17 Q. What I'm getting at here is in
18 our particular case we know that Mr.
19 Khusenov got his hand or his fingers
20 caught in that auger, and he was --
21 basically his hand was pulled in, correct?

22 A. Correct.

23 Q. It got pulled in. The machine
24 was continuing to run, correct?

25 A. Correct.

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2 Q. By the time he could observe
3 what happened, appreciate what happened
4 and react to what had happened, would you
5 agree that a couple of seconds must have
6 gone by?

7 A. Not necessarily. I think you
8 would know the -- the pain would be
9 intense, I imagine, and he would know
10 fairly quickly that this was not a good
11 thing that was happening to him. I don't
12 think it would be seconds.

13 Q. Let's break it down.
14 He gets pulled in, feels the
15 pain, in his brain he's processing it.
16 How much time is that?

17 A. If you touch a hot stove, the
18 pain is intense. You pull away very fast.
19 And so this is probably a not too
20 dissimilar sensation to touching a hot
21 stove. So fractions of a second.

22 Q. He had to process that pain in
23 that situation, correct?

24 A. Yeah. That happens pretty
25 quick, I think, physical pain.

1 ANDREW FOLEY

2 Q. And then he has to react to it,
3 correct?

4 A. Correct.

5 Q. Now, in this case you didn't
6 speak to the plaintiff, correct?

7 A. No.

8 Q. You didn't read his transcript,
9 correct?

10 A. Correct.

11 Q. It's your understanding that at
12 some point he then attempts to turn the
13 machine off? Is that your understanding?

14 A. Yes. From the other report, the
15 defendants' report I read, he says he
16 reached around to turn the button, switch
17 it off.

18 Q. As you sit here today, from the
19 moment he got his hand or fingers pulled
20 into that auger and he's feeling that pain
21 and processing it, how much damage had
22 already been done to the hand at that
23 point in time, if you know?

24 A. Instantly, probably the tips of
25 his fingers probably -- I mean, you will

1 ANDREW FOLEY

2 know pretty quickly your hand's been
3 crushed. So probably the tips of his
4 fingers.

5 Q. Are you guessing here? Is this
6 to a reasonable degree of accident
7 reconstruction certainty, sir?

8 A. Again, everybody is familiar
9 with touching a hot stove. So this is the
10 analogy I would use.

11 This crushing pain would be
12 pretty instantaneous. So your reaction
13 time to that kind of pain is pretty quick.

14 Q. And in this particular case, his
15 initial reaction would be to try to pull
16 your hand out, right?

17 A. Correct.

18 Q. In this case, that could not be
19 accomplished while the machine was still
20 on, right?

21 A. I don't believe so, yeah.

22 Q. So then we need to have -- so
23 the first thought would be get my hand
24 out, right?

25 A. Right.

1 ANDREW FOLEY

2 Q. That doesn't work, right?

3 A. Correct.

4 Q. So then he's got to go to Plan
5 B, which is I got to try to shut the
6 machine down, right?

7 A. Correct.

8 Q. And in this case, you don't know
9 how long that took, right?

10 A. I don't know.

11 Q. I want to jump back for a second
12 and just talk again about the warning
13 labels before I forget.

14 Would you agree that the purpose
15 of a safety label is to communicate a
16 potential hazard?

17 A. Correct.

18 Q. Under ANSI Section Z535, a
19 safety label must identify the hazard,
20 correct?

21 A. Yes.

22 Q. Under ANSI Z535, a safety label
23 must identify the consequences of failing
24 to avoid the hazard, correct?

25 A. That's what it says, yeah.

1 ANDREW FOLEY

2 Q. Under ANSI Z535, a safety label
3 must identify the means to avoid the
4 hazard, correct?

5 A. Again, you're reading that, but
6 I'm not sure if that's what it says
7 exactly.

8 Q. If you don't know, say you don't
9 know.

10 A. I don't know if those are the
11 words exactly, no.

12 Q. The words, and I quote, Moving
13 parts can crush and cut, close quote,
14 identifies the hazard and the consequences
15 of failing to avoid the hazard, correct?

16 A. So we are looking at the label
17 now. So that's words taken from the
18 label -- yep, that looks like that
19 identifies the hazards.

20 Q. The hazard is, open quote,
21 moving parts, close quote, and, open
22 quote, crush and cut, close quote, is a
23 consequence of failing to avoid the
24 hazard, correct?

25 A. Correct.

1 ANDREW FOLEY

2 Q. The words, open quote, keep
3 hands and fingers out of grinder head,
4 close quote, identifies the means to avoid
5 the hazard, correct?

6 A. Correct.

7 Q. The words, open quote, do not
8 use hands to feed product into the
9 machine, use the stomper or pusher, close
10 quote, identifies the means to avoid the
11 hazard, right?

12 A. Correct.

13 Q. The words, open quotation, do
14 not operate -- do not operate if safety
15 guard is removed or damaged, close quote,
16 identifies the means to avoid the hazard,
17 correct?

18 A. Correct.

19 Q. Doctor, would you agree that the
20 safety label on the subject grinder, A,
21 identifies the hazard?

22 A. Correct.

23 Q. B, identifies the means to avoid
24 the hazard?

25 A. Yes.

1 ANDREW FOLEY

2 Q. And C, identifies the
3 consequences of failing to avoid the
4 hazard?

5 A. Yes.

6 Q. You testified earlier that it
7 was your understanding that plaintiff
8 chose not to read the safety labels,
9 right?

10 A. Correct.

11 Q. You also testified that, based
12 upon the segments of plaintiff's
13 testimony, it appears that he understood
14 the hazard presented by the meat grinder,
15 and he made a conscious effort to keep his
16 hand out of the grinder, correct?

17 I could read that back if you'd
18 like.

19 MR. REDD: Miss Reporter, don't
20 worry, I got this one.

21 Q. You also testified that, based
22 upon the segments of plaintiff's
23 testimony, it appears that he understood
24 the hazard presented by the meat grinder,
25 and that he made a conscious effort to

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2 keep his hands out of the grinder,
3 correct?

4 MR. ZOHAR: I'm just going to
5 object just because it asks for this
6 expert to put a mental state on the
7 person who testified, and he's not
8 here as an expert -- a psychologist or
9 someone that has done those kinds of
10 interviews and examination of this
11 deposed individual that you want to
12 use their testimony.

13 MR. REDD: Over objection?

14 MR. ZOHAR: Over objection.

15 If you can answer, it's fine.

16 A. I would say the first part's
17 true, but the second part, his hand ended
18 up in the grinder, so I can't comment on
19 that. At some point it went into the
20 grinder.

21 Q. So you don't think he made a
22 conscious effort to keep his hand out of
23 the grinder?

24 A. I don't know. His handed ended
25 up in the grinder.

1 ANDREW FOLEY

2 Q. Well, didn't he testify
3 unequivocally that he was aware of the
4 danger and wanted to keep his hands away
5 so his hand wouldn't get ground up, or
6 words to that effect?

7 A. People don't want to crash their
8 car but they do. So it's -- he didn't
9 want to, but somehow his hand ended up in
10 the grinder.

11 Q. Let's get back to the emergency
12 stop.

13 An emergency stop button, when
14 used on a machine such as this, needs to
15 shut down the motor and the power
16 transmission, correct?

17 A. Everything, yeah.

18 Q. Have you heard of a term called
19 "coast down time"?

20 A. Yes.

21 Q. What is coast down time?

22 A. So this is where the stored
23 energy would -- even though you
24 de-energized the machine or system,
25 there's stored energy that has to

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2 dissipate.

3 So with coast down, that would
4 be like switching the engine off the car.
5 There's a time for you to come to a stop
6 as you coast down to a stop, to dissipate
7 the energy that's in the machine.

8 Q. In our case here, we've got
9 stored energy, which is the mass of the
10 auger, right, that's rotating?

11 A. So angular kinetic energy, there
12 is some, yes.

13 Q. So the act of hitting a stop
14 button doesn't mean the machine goes off
15 in a snap, correct?

16 A. In this case it would be quick,
17 very quick, I believe.

18 Q. As a practical matter, hitting
19 the off button basically de-energizes the
20 machine, correct?

21 A. Correct.

22 Q. So there's no new energy going
23 into the machine at the moment it's
24 de-energized, correct, or turned off?

25 A. Yes.

1 ANDREW FOLEY

2 Q. Then we have to wait for
3 dissipation of the stored energy, right?

4 A. Correct.

5 Q. Which in this case, it would be
6 the turning auger, correct?

7 A. Correct.

8 Q. In a machine like this, did you
9 ever test to see what the coast down time
10 was?

11 A. I didn't test, no.

12 Q. Is there any particular reason
13 why you didn't test the coast down time?

14 A. Because I know it's going to be
15 very quick just by inspection.

16 Q. Well, when you say "very quick,"
17 what does that mean; three seconds, four
18 seconds, two seconds?

19 A. Fractions of a second. Maybe a
20 second, max.

21 I haven't done the experiment or
22 the calculations, but just by looking at
23 that machine and what it's doing, the
24 stored energy is -- the reason I can say
25 this is because there is three kilowatts

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2 of power going into it when it's running.

3 That three kilowatts is just
4 turning over at three revolutions per
5 second, one to three revolutions per
6 second. So it's not moving very fast, so
7 there isn't much stored energy.

8 The radius of the auger is
9 relatively small, so it doesn't have a big
10 radius, because it's a function of the
11 radius, as well. And the friction in
12 pumping the meat through the auger is
13 high.

14 So those three things mean
15 stored energy is low, the friction is
16 high, so it will come to a stop very, very
17 quickly.

18 Q. And in this particular case, in
19 terms of that coast down time, whether it
20 was a half a second, a second, two
21 seconds, whatever it was, in that coast
22 down time, would you agree, Doctor, that
23 the plaintiff's hand would have continued
24 to get injured as the auger turned with
25 his hand in it?

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2 A. For the fraction of a second,
3 yes, it would still continue to get
4 some --

5 Q. Whatever the time is, when it's
6 coasting down, it's spinning, his hand's
7 in the auger, and it's continuing to be
8 injured, right?

9 A. Correct. I was just correcting
10 the three-second comment, that's all.

11 Q. Again. You haven't done the
12 math on this, correct?

13 A. Correct.

14 Q. At some point down the road, you
15 might be asked to do so. We can maybe
16 identify with specificity how much coast
17 down time there was, but for purposes of
18 right now we don't know exactly, correct?

19 A. Correct.

20 MR. ZOHAR: The testimony is
21 going to read for itself, and he did
22 respond of what the max number time
23 is. So despite the fact of not having
24 an exact time here, he did give a time
25 restraint, an upper limit on this.

1 ANDREW FOLEY

2 BY MR. REDD:

3 Q. Now, for this design that you've
4 recommended -- which is a mushroom
5 emergency stop, right?

6 A. Yeah, it's a standard stop
7 button.

8 Q. -- you're saying that should
9 have been there instead of the red button
10 that we see next to the warning label?

11 A. I would recommend that, yes.

12 Q. Now, in putting out that opinion
13 about a mushroom stop instead, did you
14 ascertain the cost of that?

15 A. I don't know exactly what it is.
16 It's not tremendously expensive relative
17 to the price of the machine.

18 Q. But you didn't do that cost
19 analysis in your review of this case,
20 correct?

21 A. I did not.

22 Q. You also didn't do any field
23 testing of this mushroom design you talked
24 about, correct?

25 A. No. I have used them before.

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2 Q. On this type of machine?

3 A. On rotating machinery, lathes,
4 mills, rotating machines, not a grinder
5 specifically.

6 Q. Not a meat grinder, though,
7 right?

8 A. Correct.

9 Q. Now, in terms of the location of
10 this mushroom stop button, where would you
11 have put it?

12 A. On the front of the machine.

13 Q. Where on the front of the
14 machine?

15 A. On the front face. So it would
16 be facing the operator, not around the
17 corner. Maybe even above the tray
18 somewhere.

19 Q. You haven't drawn out any plans,
20 right, about the feasibility of that or
21 the cost of that idea?

22 A. No, but it's just a button.
23 It's just a switch.

24 Q. In terms of the biomechanics of
25 this -- or the accident reconstruction of

1 ANDREW FOLEY

2 this particular accident, was it your
3 understanding that the --

4 MR. ZOHAR: Strike that.

5 Q. Do you know where the plaintiff
6 was standing at the moment the accident
7 occurred, the moment his hand got drawn
8 in?

9 A. So he -- from the video, he was
10 in front of the machine. The power head
11 would have been to his left and below him
12 under the tray.

13 Q. Do you know where he was
14 standing in relation to the warning label?

15 A. So he would have been
16 standing -- it would have been directly in
17 front of him below the tray, not visible,
18 I believe.

19 Q. If he was standing facing the
20 machine, do you know if his head would
21 have been lined up with the hole, would it
22 have been to the right of the hole, left
23 of the hole, if you know?

24 A. Just looking at the video, it
25 would be maybe just to the right of the

1 ANDREW FOLEY

2 hole, I would think.

3 I mean, he's moving as -- as
4 he's doing this, he's moving (indicating).
5 But it's basically, on average, somewhere
6 in the center of the tray, I imagine, is
7 where the axis of his body was.

8 Q. In the center?

9 A. Somewhere in the center of the
10 tray. I mean, he moves as he's doing
11 this.

12 Q. Well, I want you to assume that
13 there's been testimony in the case that he
14 was taking meat in a tray with his right
15 hand, and he was pushing the meat across
16 the tray with his hand and pushing it into
17 the hole. I want you also to assume that
18 as he put -- I'll start again.

19 I want you to assume that we've
20 had testimony in the case that he was
21 taking meat on the right-hand side of that
22 tray and was moving it along with his
23 right hand --

24 (Technical difficulty.)

25 Q. I want you to assume we've had

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2 testimony in the case that Mr. Khusenov
3 was taking meat with his right hand, meat
4 that was located on the right side of the
5 tray, and was moving the meat along and
6 pushing it into the hole on the left-hand
7 side of the tray; and as he was pushing
8 meat into the hole, that's when his hand
9 got caught.

10 Now, I want you to tell me if he
11 was -- when his right hand got caught in
12 the hole, where would his left hand have
13 been in relation to the on/off button that
14 existed?

15 A. Again, I don't know where his
16 left hand was. I can't see it in the
17 video, but it's to the left of his right
18 hand. I can't say where it was.

19 Q. Was it within a foot of the stop
20 button?

21 A. Again, I can't say because I
22 can't see it in the video, but it's --
23 well, his right hand is in the machine, so
24 his left hand is -- again, I don't know if
25 he's rotated -- it's difficult to say

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2 because I can't see his left hand in the
3 video. It could be a foot, could be 18
4 inches, could be 12 inches. I don't know.
5 Of that order. Does that help?

6 Q. In any case, because you didn't
7 read the transcript, you don't know where
8 his body was specifically positioned
9 relative to the machine.

10 Is that a fair statement?

11 A. From the video I can see where
12 he was standing when he was operating the
13 machine.

14 Q. But we can't see his head,
15 correct, at the moment the accident
16 occurs?

17 A. At the moment -- well, just
18 before, then he goes off shot, correct.

19 Q. We can't see the left portion of
20 his body, correct?

21 A. Correct.

22 Q. We can't see the machine -- we
23 can't see the area where the guard should
24 be, and we can't see the headstock in that
25 video, correct?

1 ANDREW FOLEY

2 A. Correct.

3 Q. And we can't see the off button
4 and where it is in relation to his left
5 hand, correct?

6 A. Correct.

7 I'm looking at my video. He's
8 kind of rotated at 90 degrees to the
9 machine, it looks like, pushing the meat
10 in. He's rotating as he's pushing the
11 meat in.

12 Q. At the moment his right hand
13 gets caught, his left hand is free,
14 correct?

15 A. Yes. But, again, if he's at
16 right angles, then it could be further
17 away because he's at right angles to the
18 machine. So, again, I can't say how close
19 he is.

20 Q. So if we don't know the exact
21 position of his body at the moment his
22 right hand gets caught, we really can't
23 with any certainty determine whether he
24 could have taken his left hand and hit
25 that big red button on the side of the

1 ANDREW FOLEY

2 machine, correct?

3 MR. ZOHAR: Objection to the
4 form of the question.

5 Go ahead if you can answer.

6 A. You don't know -- we don't know.
7 From the front of the machine?
8 Again, the button that's there already is
9 effectively in that zone.

10 I don't know what the point of
11 the question is. Could he touch it? I
12 don't know.

13 Q. You don't know? We're kind of
14 speculating here, correct, on that
15 specific point?

16 A. On his hand operation, correct.
17 The button's designed so you can
18 push it with your body, as well.

19 Q. And the left hand is part of the
20 body, too?

21 A. You can bump it -- so you can
22 bump it with other parts of your body. It
23 doesn't require a hand to actually operate
24 it.

25 Q. So are you suggesting there

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2 should have been some sort of other device
3 that he could have bumped into --

4 A. This button is designed -- it's
5 a big mushroom head, so you can hit it
6 with your body if your hand's caught.

7 Q. What dimensions would you use
8 for your mushroom button?

9 A. So I gave some dimensions in my
10 report of a format that would not be too
11 dissimilar in size to the button, but the
12 head was bigger, probably 80 percent
13 bigger, the mushroom head.

14 Q. How much bigger?

15 A. Again, looking at it, somewhere
16 between -- I think the existing one is an
17 inch. The one that I've shown in my
18 report is about 40 or something
19 millimeters, so about 60 percent bigger in
20 diameter.

21 Q. Would you have placed that
22 button in the exact same location as the
23 existing button or somewhere else?

24 A. I would have put it on the front
25 face.

1 ANDREW FOLEY

2 Q. And you never did any drawings
3 or sketches showing that button, correct?

4 A. I did not.

5 Q. You never did any feasibility
6 studies about the effectiveness of that
7 button, how much it would cost in an
8 altered or changed design?

9 A. I didn't do specific studies,
10 but these buttons are on similar machines,
11 competitive machines. They're already
12 there.

13 Usually, by default you would
14 put something like this on a machine like
15 that.

16 Q. Doctor, can you cite any design
17 standard that applies to KG-32 Pro-Cut
18 meat grinder, our machine, which requires
19 the use of an emergency stop button?

20 A. No.

21 Q. I'm sorry. That was no?

22 A. That's a no.

23 Q. Would you agree that the off
24 button here on the meat grinder is not
25 designed to be an emergency stop button?

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2 A. Correct.

3 Q. Would you agree that the
4 emergency stop button that you propose in
5 this case would not be designed to prevent
6 an incident but would be pressed only
7 after the plaintiff's hand is grabbed by
8 the auger?

9 A. That's possible, yeah. There's
10 other reasons -- somebody seeing somebody
11 doing something dangerous, they can press
12 it.

13 But yeah, this case, he would
14 have pressed it after his hand had gone
15 in.

16 Q. Would you agree that you lack
17 the necessary expertise to offer an
18 opinion regarding what -- whether there
19 would have been any difference in
20 plaintiff's injury if there would have
21 been an emergency stop button on the
22 grinder?

23 A. Sorry, can you phrase that
24 question again?

25 Q. Well, you've offered an opinion

1 ANDREW FOLEY

2 about the impact of the mushroom button
3 being available to plaintiff.

4 My question to you is, if we
5 assume that there was a mushroom-style
6 button, as you propose, on the front of
7 the machine, can you state with any -- to
8 a reasonable degree of engineering
9 certainty that the plaintiff's injuries
10 would have been any different if your
11 button that you talked about was in place?

12 A. I believe it could have been
13 less serious.

14 Q. Well, at the moment that the
15 machine powered down and all the energy
16 was dissipated from the machine, do you
17 know how much injury was done to the
18 plaintiff's hand at that moment in time?

19 A. Again, the time the machine
20 takes to stop I think was small. The time
21 it takes to hit the stop button is a
22 different period of time. It's not the
23 same thing.

24 Q. Did you review any medical
25 records in this case?

1 ANDREW FOLEY

2 A. I did not.

3 Q. Do you know the extent and the
4 severity of the injury and -- what
5 specific bones and joints were affected by
6 the accident?

7 A. I just know it's basically up to
8 just past his wrist, is my understanding.

9 Q. But you didn't look at the
10 medical records, correct?

11 A. No.

12 Q. And you didn't see any
13 photographs, correct?

14 A. Not of his hand, no.

15 Q. And you're not a biomechanical
16 expert who's qualified to testify about
17 the interaction of human body parts and
18 machinery --

19 A. Again --

20 Q. -- in terms of injury causation?

21 A. I'm not a doctor. I'm not a
22 medical doctor, but I know what a -- I can
23 visualize what a grinder will do to a
24 hand. I've seen pictures of hands in
25 grinders. I know the damage they will do.

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2 Q. But in this case, because you
3 haven't seen the medical records, you
4 don't know if there was two inches that
5 were pulled into the machine of his
6 fingers, whether part of his hand got
7 pulled in, whether it got pulled in up to
8 his forearm?

9 You don't know the exact extent
10 of the physical injuries sustained in this
11 case because you haven't looked at the
12 medical records.

13 Is that a fair statement?

14 A. I've been told that the injuries
15 were just past his wrist, and I know what
16 the injury would look like because I've
17 seen pictures of grinders with hands in
18 them.

19 Q. Being told is one thing. That
20 is hearsay.

21 My question to you is did you
22 see any certified medical records showing
23 you the extent and severity of this
24 particular injury?

25 A. No, I did not.

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2 Q. And you didn't look at the
3 transcript of the plaintiff that told
4 about the extent and severity of the
5 injury, correct?

6 A. I did not.

7 Q. Based on the fact that we don't
8 have this fundamental information, we're
9 speculating as to the extent and severity
10 of the injury caused in whatever seconds
11 it was for this accident to occur and for
12 the injuries to be sustained?

13 MR. ZOHAR: We have to object to
14 the form. We have to keep some proper
15 form here because I don't even
16 understand these questions at this
17 point.

18 MR. REDD: I think we're going
19 to move on.

20 BY MR. REDD:

21 Q. Let's go to your next point,
22 which is -- I think we're up to four.

23 If we go back to your report,
24 which I think is G, if you could read that
25 into the record, please. It's page 23 of

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2 your report.

3 A. The location of the stop button
4 should not be impaired by obstructions and
5 protrusions, such as the grinder head
6 locking handle and the feed tray locking
7 knob, both of which are in close proximity
8 to the stop button on this machine.

9 Other grinders provided by the
10 same manufacturer have removed these
11 obstructions.

12 Q. Let's talk about that.

13 So the grinder head, is that
14 also known as the headstock?

15 A. I believe so, yes.

16 MR. REDD: Peter, can we go to
17 the photograph that shows the full
18 side view of the machine with the
19 cabinet, the headstock, the pan. Like
20 this.

21 THE WITNESS: Page 19.

22 MR. URRETA: This is Exhibit ZD.

23 (Defendant's Exhibit ZD,
24 photograph, marked for identification,
25 as of this date.)

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2 BY MR. REDD:

3 Q. Doctor, if you could take a look
4 at this exhibit that's before you, just so
5 we get a clearer picture in color.

6 Now, in sub-point four, you said
7 that the stop button should not be
8 impaired by the obstructions and
9 protrusions such as the grinder head.

10 Looking at that photograph
11 before you, where is the grinder head?

12 A. So the grinder head is the --
13 it's the cylinder that you can see in the
14 middle of the photograph to the left
15 underneath the tray. It's a horizontal
16 cylinder sticking out with the ring on the
17 end.

18 Q. And that grinder head's on the
19 other side of the stop button, correct?

20 A. It's behind the stop button from
21 this view, correct.

22 Q. Before you could reach the --
23 any portion of the headstock, you would
24 have to put your hand -- your hand would
25 have to bypass and go by the stop button.

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2 Is that a fair statement?

3 A. Sorry, again, I was talking
4 about the handle and the knob, not the
5 grinder head in point four.

6 So the obstructions are the
7 black knob and the silver T I was talking
8 about, not the grinder head.

9 Q. I'm just going to read what it
10 says here. It says, The location of the
11 stop button should not be impaired by
12 obstructions and protrusions, such as the
13 grinder head locking handle.

14 So the locking handle you're
15 referring to is -- it looks like a handle,
16 right, below the red button?

17 A. Correct.

18 Q. That locking handle is below the
19 red button, right?

20 A. Correct.

21 Q. So if your left hand is --
22 you're standing in front of the machine,
23 your hand doesn't touch the handle if
24 you're going for the button, right?

25 A. Well, depends how you're going

1 ANDREW FOLEY

2 to the button, the vector that you take,
3 the path your hand takes.

4 Q. Well, the handle is not between
5 the stop button and the person?

6 A. If you're lifting your hand up
7 to the button it is.

8 Q. Well, how high is this handle
9 off the ground?

10 A. Well, his right arm is now in
11 the grinder. He's standing there, and I'm
12 not sure he's looking for the button.

13 So if he has to reach down
14 underneath -- if he has to reach under the
15 tray, so it's conceivable that he could
16 hit that handle.

17 Q. Well, if he's reaching under the
18 tray, the first thing he would encounter
19 would be the red stop button?

20 A. Not necessarily. That hand has
21 to travel to the button. There's a path,
22 an vector, that it takes. So it could
23 easily hit either of those obstructions or
24 protrusion.

25 Q. So if his left hand was down by

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2 the floor and he wanted to hit the button,
3 then he'd have to raise his hand upwards
4 and then possibly encounter the handle
5 before he gets to the button.

6 Is that what you're saying?

7 A. This grinder is on a table, a
8 raised surface, so it's not on the floor.

9 So he wouldn't have to be on the
10 floor -- he has to bring his hand to the
11 button. He has to transit that hand
12 through space, and there's two obstacles
13 in the way there, potentially.

14 Q. But you don't know the path of
15 his hand?

16 A. I do not.

17 Q. Because you didn't talk to him,
18 and you didn't look at the transcript,
19 right?

20 A. No, I've just seen the
21 transcript that's been quoted by the
22 defendants, so I don't know the path of
23 his hand, no.

24 Q. Was there any testimony from any
25 source that said he was fumbling for the

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2 stop button and encountered the handle
3 that you mentioned in point four?

4 A. Not that I'm aware of.

5 Q. Let's go to point five, please.

6 A. Would you like to me read it?

7 Q. Yes.

8 A. As a practical matter, to obtain
9 the high meat-processing rates advertised
10 for this machine, it is not realistic to
11 expect an operator to be constantly
12 removing and inserting the plastic pusher
13 into the guard in order to move the meat
14 horizontally across the tray and then
15 vertically down the chute. As such, this
16 system needs to be improved.

17 In the interim, recognition of
18 the fact that users will remove the guard
19 needs to be made. Full stop. Per UL
20 7319.1A, and as such, an interlock that
21 would prevent operation of the grinder
22 without the guard is required.

23 Q. Okay. Let me break that down.
24 Let me start by asking you about the
25 processing rates.

1 ANDREW FOLEY

2 Do you know how much meat was
3 being processed on this particular
4 machine?

5 A. I do not on that day, no.

6 Q. On any day?

7 A. I know the literature claims it
8 can do 3,000 pounds an hour.

9 Q. Putting aside the literature, in
10 terms of this machine in this location,
11 did you ever ascertain what the needs were
12 of this butcher shop in terms of the use
13 of this machine, whether it was five
14 pounds a day of pork, 10 pounds of beef,
15 30 pounds of chicken? Did you ever
16 ascertain what their needs were, their
17 processing needs were?

18 A. I did not and I doubt -- that
19 changes, as well. They probably don't
20 know that either.

21 No, I did not. Sorry.

22 Q. Now, before you did your
23 analysis and rendered your opinion here,
24 did you ever go to the machine and attempt
25 to put meat across the tray and into the

1 ANDREW FOLEY

2 hole to grind it up?

3 A. I did not.

4 Q. More specifically, using a
5 pusher?

6 A. I used the pusher without the
7 meat when I was inspecting it. I
8 simulated, to my knowledge, what I think
9 would have been going on, but I have not
10 pushed meat in, no.

11 Q. But in terms of how much meat
12 could be processed here by the people
13 actually working in that shop, you
14 probably should have talked to them,
15 right?

16 MR. ZOHAR: Objection to form.
17 Is there a question?

18 A. Are you saying I -- I -- there's
19 lots of things you should do.

20 I did not talk to them, no, I
21 did not.

22 Q. Well, in talking to them, we can
23 get a better understanding whether the
24 processing rates of this machine with the
25 guard on were a problem --

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2 MR. ZOHAR: I'm going to object
3 to statements. If there's a
4 question -- because I don't understand
5 what question is being posed on this.

6 Q. You don't know what the
7 processing rate was for the workers in
8 this store as they processed meat on this
9 machine on any given day.

10 Is that a fair statement?

11 A. Correct.

12 Q. Again, because you didn't talk
13 to anybody in the shop, correct?

14 A. Correct.

15 Q. And you didn't read the
16 plaintiff's transcript, correct?

17 MR. ZOHAR: Asked and answered.

18 A. Correct.

19 Q. Have you ever seen a guard where
20 there was -- on a meat grinding machine
21 where they used a pusher through a guard
22 besides the subject machine?

23 A. I believe so. Other
24 manufacturers.

25 Q. Now, for this particular

1 ANDREW FOLEY

2 machine, at some point in time there was a
3 guard in place, correct?

4 A. I understand that to be the
5 case, yes.

6 Q. And in this particular case, how
7 was that guard, okay, attached to the
8 machine?

9 A. So there are two, I believe,
10 stainless steel columns that are attached
11 to the guard and the tray. How they're
12 actually attached, I think they're
13 probably spot welded. I couldn't
14 determine when I looked at it, but they
15 are rigidly attached, or they would be
16 rigidly attached.

17 On the second machine where I
18 saw the guard, they were probably friction
19 or spot welded into place.

20 Q. In this case, it's your
21 understanding at some point in time there
22 was a permanently affixed guard on the
23 subject machine?

24 A. That is my understanding, yes.

25 Q. And this was not a guard that

1 ANDREW FOLEY

2 was designed to be removed, correct?

3 A. Correct.

4 Q. On top of the guard, there were
5 a number of holes, right?

6 A. Correct.

7 Q. And the idea with the holes
8 were, once the meat gets pushed into the
9 hole using the pusher, then the pusher
10 would be put into a vertical position, and
11 you would push the meat down by putting
12 the pusher through the hole and pushing
13 the meat down into the throat, correct?

14 A. Correct.

15 Q. Now, in this point five you
16 indicate that you think there should have
17 been some sort of an interlock device,
18 right?

19 A. Correct.

20 Q. That, you believe, somehow would
21 have prevented the accident in question?

22 A. Correct.

23 Q. And you also did some sort of a
24 drawing, I think?

25 A. A sketch.

1 ANDREW FOLEY

2 MR. REDD: Peter, can you put up
3 the drawing, please?

4 MR. URRETA: Do you know what
5 page of the report that is?

6 THE WITNESS: 22.

7 BY MR. REDD:

8 Q. Now, looking at that -- there
9 seems to be a handwritten drawing there,
10 right?

11 A. Correct.

12 Q. Is that what you hand drew?

13 A. Yes.

14 Q. What's the wording you have?
15 What does it say next to your drawing
16 there?

17 A. Guard insulated from tray,
18 completes permanent interlock system.

19 Q. Now, one of the problems with
20 interlock devices is that they can be
21 gotten around, correct?

22 A. Correct.

23 Q. And so if somebody wants to get
24 around an interlock device, they'll find a
25 way to get around it, right?

1 ANDREW FOLEY

2 A. They can try, yes.

3 Q. Now, in this case, this is not a
4 removable guard, correct? It's a
5 permanent guard, correct?

6 A. Correct.

7 Q. Now, when you rendered your
8 opinion in this case, were you aware of
9 how this guard was removed?

10 A. I am now. When I wrote the
11 report, I was not.

12 Q. What's your understanding now as
13 to the efforts that were made to remove
14 that guard?

15 A. I believe a gentleman who was
16 the plaintiff's father, I believe, used an
17 angle grinder over about a 10- to
18 15-minute period and ground the two
19 cylinders off.

20 Q. Well, before they employed the
21 grinder to grind off that guard, are you
22 aware of any other measures that were
23 taken to try to remove the guard?

24 A. I believe they tried to use a
25 hammer.

1 ANDREW FOLEY

2 Q. So we had two separate ways to
3 try to get this thing off, right?

4 A. Correct.

5 Q. Eventually, through the use of a
6 grinder and a grinding process of 10 to 15
7 minutes, they finally succeeded in getting
8 the safety guard off, right?

9 A. Correct.

10 Q. So in your opinion, you believe
11 there should have been an interlock where?
12 Exactly where would that be located?

13 A. So an interlock is made up of
14 a -- there's the physical interlock
15 itself, and then there's the wiring that
16 would go to a -- to a server or switch
17 that would then disconnect the machine.

18 So this would be part of that
19 circuit, would be the wires through the
20 cylinder and then coming down the other
21 cylinder. So the actual metal of the
22 guard would complete the circuit.

23 And so once that guard was
24 removed, you wouldn't have a complete
25 circuit, and the machine wouldn't work.

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2 Q. Now, are you familiar with the
3 use of this machine, in terms of how it
4 gets cleaned?

5 A. I -- no, no, I can't say as I
6 am.

7 Q. Would it surprise you, sir, that
8 pursuant to FDA requirements, that this
9 machine needs to be cleaned with some
10 frequency?

11 A. That does not surprise me, no.

12 Q. Because when you're pushing
13 meats through, you got to clean it often,
14 correct?

15 A. Correct.

16 Q. What's your understanding in
17 terms of the cleaning? What parts of the
18 machine would have to be removed to
19 properly clean it to comply with the FDA
20 and other food standards?

21 A. So I imagine they would take the
22 head off, the auger, and probably the
23 tray, as well, and wash those down on a
24 daily basis, I should imagine.

25 Q. We'll say you were going from

1 ANDREW FOLEY

2 pork or beef, for example. You would have
3 to clean it up between the use of
4 different kinds of meat, right?

5 A. Yes, yes.

6 Q. So, theoretically, you could be
7 changing out and -- you could be cleaning
8 this machine multiple times a day if
9 you're cutting different types of meats,
10 right?

11 A. Correct.

12 Q. Now, so in terms of your
13 interlock proposal, right, you did a
14 little drawing there, right?

15 Was there any other drawing that
16 you did that would show us the wiring and
17 the circuitry that would be involved in
18 your interlock proposal?

19 A. No.

20 Q. Would you agree that
21 something -- if you're going to offer up
22 an opinion about an interlock, you need to
23 offer up, you know, a little more detail
24 about the electrical circuitry surrounding
25 the guard or the interlock device,

1 ANDREW FOLEY

2 correct?

3 A. I think this was sufficient for
4 the point I was trying to make. I don't
5 think -- you can argue with quantity, how
6 much, but I was making the point that
7 there's a possibility there of an
8 interlock. That's all I was trying to do.

9 Q. But if you're talking about the
10 possibility of an interlock, you also have
11 to talk at the electronics that go with
12 it?

13 A. Well, there's concepts, there's
14 detail design. I could produce CAD
15 drawings, electric circuit diagrams.

16 For the purpose of this report,
17 that's all I was trying to portray.

18 Q. But you didn't do those drawings
19 and schematics specifically in terms of
20 electronics for this interlock that you've
21 proposed, right?

22 A. I did not for this report, no.

23 Q. By doing the drawings and doing
24 the design, we also might get a better
25 understanding of the feasibility of the

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2 concepts which you've recommended, right?

3 A. You can -- you can go into as
4 much detail as you require. This was
5 sufficient for this report.

6 Q. Well, but one of the
7 considerations here is cost, right?

8 A. That is a consideration.

9 Q. So if we're going to add an
10 interlock and circuitry on the machine, we
11 need to understand exactly what's going to
12 be added to it and the costs associated
13 with it, right?

14 A. And the design of that is also a
15 cost, which you have to take the time to
16 do the design.

17 For the purpose of this report,
18 it wasn't justified to show that, in my
19 opinion, for this report.

20 Q. If we're talking about an
21 alternate design, these are considerations
22 we need to consider, and one of them is,
23 is it feasible, right?

24 A. Eventually, you can get into a
25 detailed design, correct.

1 ANDREW FOLEY

2 Q. And then we have to look at
3 cost, correct?

4 A. Correct.

5 Q. And we have ask ourselves if
6 it's practical, correct?

7 A. Correct.

8 Q. So in this particular case, if
9 you've got your interlock device that
10 needs to be wired by the guard there, if
11 the tray has got to be removed with the
12 guard in place, right, that tray has got
13 to be submerged in water and cleaned,
14 right?

15 A. Right.

16 Q. In those circumstances, in your
17 report here, you don't give us any
18 understanding as to how the electronics
19 would work after they were submerged in
20 water perhaps multiple times a day because
21 of the cleaning process.

22 A. There's no electronics in the
23 tray. That's just a wire connection.
24 Electronics could be in the power head --
25 in the actual -- the box, the enclosure.

1 ANDREW FOLEY

2 There's no reason for the sensitive
3 electronics to be on the tray.

4 Q. So it's going to be inside the
5 tray itself?

6 A. No. It could be inside the
7 Pro-Cut -- the box that you see underneath
8 the tray where all the electrical
9 equipment is already, it would probably be
10 in there.

11 Q. If I was to tell you that the
12 tray gets removed to be cleaned, and now
13 you've got a wire going to an interlock
14 device, how does that work?

15 A. We have electrical wires in many
16 things that are submerged. It's not --
17 it's just a wire and a connector, so -- we
18 can get into the details, but there is no
19 electronics apart from a connector on that
20 tray required by this sketch.

21 Q. But as a practical matter, if
22 we've got to clean this tray, we've got to
23 get it to the water.

24 So are we bringing a tub of
25 water over to dip it in, so that's it's

1 ANDREW FOLEY

2 stretching the wire over so that we can
3 put it in to clean it? How does this
4 work?

5 A. You can have connectors. The
6 tray comes in and connects to the box.
7 It's not a problem. It's just the
8 interlock itself is not a problem being
9 washed.

10 Q. You're saying it's not a
11 problem, but you haven't done the
12 diagrams, you haven't done the cost
13 studies.

14 So you're speculating here,
15 correct?

16 A. For the purpose of the report, I
17 showed where an interlock -- the working
18 part of the interlock would be. I did not
19 design the entire interlock system into
20 this machine, no.

21 Q. And therein lies the problem
22 here. Okay.

23 Would you agree that the cutting
24 off of the guard was a misuse of the meat
25 grinder?

1 ANDREW FOLEY

2 A. Yes.

3 Q. Would you agree that the
4 employees at Karzinka used a grinder to
5 cut off the guard?

6 A. I believe so, yes.

7 MR. ZOHAR: Objection to --
8 first of all, to secondhand
9 information here.

10 If there's something that you
11 want to introduce here or ask a
12 question in proper form, I don't have
13 a problem, but we're getting away from
14 proper form in some of these
15 questions.

16 MR. REDD: Gil, just object to
17 form, and we'll talk to the judge
18 about it.

19 BY MR. REDD:

20 Q. Would you agree that there's
21 nothing in the literature that accompanied
22 the purchase of the meat grinder
23 suggesting that the guard should be
24 removed for any purpose?

25 A. I believe the 3,000 pounds an

1 ANDREW FOLEY

2 hour kind of implied a potential for this
3 machine that probably couldn't be realized
4 with the guard. So indirectly I would say
5 it's not clear-cut.

6 Q. Did you ever ascertain if it was
7 possible to get that kind of production
8 out of the machine?

9 A. No, I did not.

10 Q. In order to find out if it can
11 meet the production that's quoted in the
12 manual, you probably want to have a worker
13 there with the meat and to go at it, and
14 see if it can do what it says it can do,
15 right?

16 A. It's 3,000 pounds of meat. I've
17 got a vision of what that is, and I've
18 seen the size of those holes. So it would
19 be quite the feat to do that.

20 Q. But we don't know for sure
21 because it was never tested? No one ever
22 did it? No one ever tried to do it,
23 right?

24 A. No, they did not. That number
25 came from somewhere in their manual, so...

1 ANDREW FOLEY

2 Q. Would you agree that, as
3 designed, the guard need not be removed?

4 A. Again, to achieve those
5 production rates, maybe it does have to be
6 removed.

7 Q. It may? It may, correct?

8 A. Correct, it may have to be
9 removed.

10 Q. But it may not because we don't
11 know because nobody tried to do it. We
12 don't know?

13 A. Correct.

14 Q. Would you agree that Mr.
15 Khusenov's incident is the only accident
16 known to Prokraft involving a Pro-Cut meat
17 grinder where a customer removed the
18 guard?

19 A. I do not know the answer to that
20 question.

21 Q. Did you do any research in that
22 regard?

23 A. As much as I can Google and
24 search for news stories, I did.

25 Q. Other than the sketch that we

1 ANDREW FOLEY

2 see right there, did you do any further
3 engineering analyses with respect to the
4 proposed alternative design?

5 A. No.

6 Q. Have you attempted to create the
7 alternative design and implement it into a
8 meat grinder?

9 A. No.

10 Q. Have you attempted to create the
11 components that would comprise the
12 interlock?

13 A. No.

14 Q. Have you attempted to perform
15 any tests of the alternative design to
16 determine whether there was any potential
17 rate for error?

18 A. Rate for error? Sorry. Is that
19 what you said?

20 Q. Correct.

21 A. No.

22 Q. You would agree with the general
23 proposition that interlocks can be
24 bypassed by operators?

25 A. Yes.

1 ANDREW FOLEY

2 Q. Have you attempted to perform
3 any tests to determine whether the
4 proposed interlock that you propose could
5 be bypassed by users of the meat grinder?

6 A. I have not.

7 Q. Have you attempted to perform
8 any tests to determine how to incorporate
9 the wiring for the interlock into the
10 existing meat grinder housing?

11 A. I have not.

12 Q. Have you attempted to perform
13 any tests to determine whether the
14 alternative design may pose alternative
15 risk or other performance issues?

16 A. No.

17 Q. Have you performed a patent
18 search to determine whether your proposed
19 alternative design has been subject to
20 peer review?

21 A. A patent search for patent
22 review? I have not, no.

23 Q. Have you provided your proposed
24 alternative design to any other engineer
25 for peer review?

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2 A. No, I have not.

3 Q. Have you published any academic
4 paper in which you identified the proposed
5 alternative design for the purpose of
6 obtaining peer-review feedback?

7 A. No.

8 MR. REDD: I'm just checking on
9 some things here. Give me a moment.

10 THE WITNESS: I'll just nick to
11 the bathroom. I'll be right back.

12 MR. REDD: Let's take five.

13 (Brief recess taken.)

14 EXAMINATION BY

15 MR. EVANS:

16 Q. Good afternoon, Dr. Foley. My
17 name is Tom Evans. I'm an attorney with
18 Congdon Flaherty. I represent Karzinka in
19 the third-party action. I just have a few
20 follow-up questions for you.

21 With respect to the warnings, in
22 your opinion that there should have been a
23 danger warning as opposed to a regular
24 warning based upon "could" or "will" cause
25 serious injury or death, you're aware that

1 ANDREW FOLEY

2 this machine had a permanent fixed guard,
3 correct?

4 A. Correct.

5 Q. Okay. And as a permanent fixed
6 guard in the design of the safety guard on
7 this machine, it would not allow one's
8 hand to go down into the opening of the
9 headstock, correct?

10 A. Correct.

11 Q. And under no circumstances could
12 one get their hand into the headstock with
13 that fixed safety guard in place, correct?

14 A. I'm not sure about children,
15 small hands and stuff.

16 Q. Well, outside of children
17 operating the machine, correct?

18 A. Correct.

19 Q. So, therefore, the warning was
20 sufficient enough for this particular
21 machine as designed because there's not a
22 "will" aspect to the warning that you
23 would consider on this machine with a
24 fixed guard and the inability to get one's
25 hand down into that headstock, correct?

1 ANDREW FOLEY

2 A. No. Again, I think if the
3 headstock's there, correct, but will
4 people remove it? Yes.

5 And do you still want the
6 guard --

7 (Reporter clarification.)

8 A. So I would say that once the
9 guard's been removed, even though they
10 shouldn't, then there's still a need for
11 that danger sign.

12 Q. Well, as part of the warning
13 sign that was currently on the machine, it
14 warned against removing the guard,
15 correct?

16 A. Yeah. But these are two
17 independent attempts at protecting people.
18 The -- removing the danger is the first
19 thing, the guard is the second, the labels
20 are a third level. They're not
21 independent. They're working together to
22 stop the injury.

23 So I would still say that the
24 danger sign is relevant.

25 Q. Well, as designed -- as the

1 ANDREW FOLEY

2 distributor and/or manufacturer, as
3 designed with the permanent fixed guard,
4 we've already established that one could
5 not get their hand into that headstock?

6 A. Again, I'll go back -- sorry to
7 repeat myself, but you can have enclosures
8 and guards that can be removed, and
9 there's still warning signs there present.
10 I mean, they shouldn't remove it, but they
11 did.

12 Once that's gone, the danger is
13 definitely there.

14 Q. Well, we didn't talk much about
15 the plunger, so I'd like to get into the
16 plunger with you, as well.

17 The plunger, as utilized or
18 designed on this particular machine, is
19 used by your hand to push the meat into
20 the headstock so that your hand would not
21 come anywhere near the entrance or opening
22 to that headstock, correct?

23 A. Correct.

24 Q. And even with a removed guard,
25 the fixed guard, the operator could use

1 ANDREW FOLEY

2 just the plunger and not get his hand
3 anywhere near that headstock, correct?

4 A. Correct.

5 MR. EVANS: I don't think I have
6 anything else, Mr. -- Dr. Foley.
7 Thank you very much.

8 MR. REDD: One follow-up here.

9 CONTINUED EXAMINATION

10 BY MR. REDD:

11 Q. Doctor, in terms of the proposal
12 you made for an interlock device, did you
13 do any research to look into the
14 possibility that the interlock, as you
15 proposed, might be bypassed?

16 A. I did not.

17 MR. REDD: Okay. Thank you,
18 Doctor, I appreciate your time.

19 I'm done.

20 THE COURT REPORTER: Off the
21 record, please.

22 (Discussion off the record.)

23 MR. ZOHAR: On the record, we
24 need a copy of the transcript of
25 today's deposition of Mr. Foley.

1 ANDREW FOLEY

2 MR. EVANS: Yes, third-party
3 defendant needs a copy of the
4 transcript.

5 (Time noted: 5:08 p.m.)
6
7
8
9

10 -----
11 ANDREW FOLEY
12

13 Signed and subscribed to
14 before me this day
15 of , 20__.

16 -----
17 Notary Public
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I N D E X

Witness: ANDREW FOLEY

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Counsel has retained all exhibits.

C E R T I F I C A T E

I, TAMMY O'BERG, a Notary Public
within and for the State of New York, do
hereby certify:

That ANDREW FOLEY, the witness whose
examination is hereinbefore set forth, was
duly sworn by me and that this transcript
of such examination is a true record of
the testimony given by such witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 7th day of September, 2022.



TAMMY O'BERG

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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